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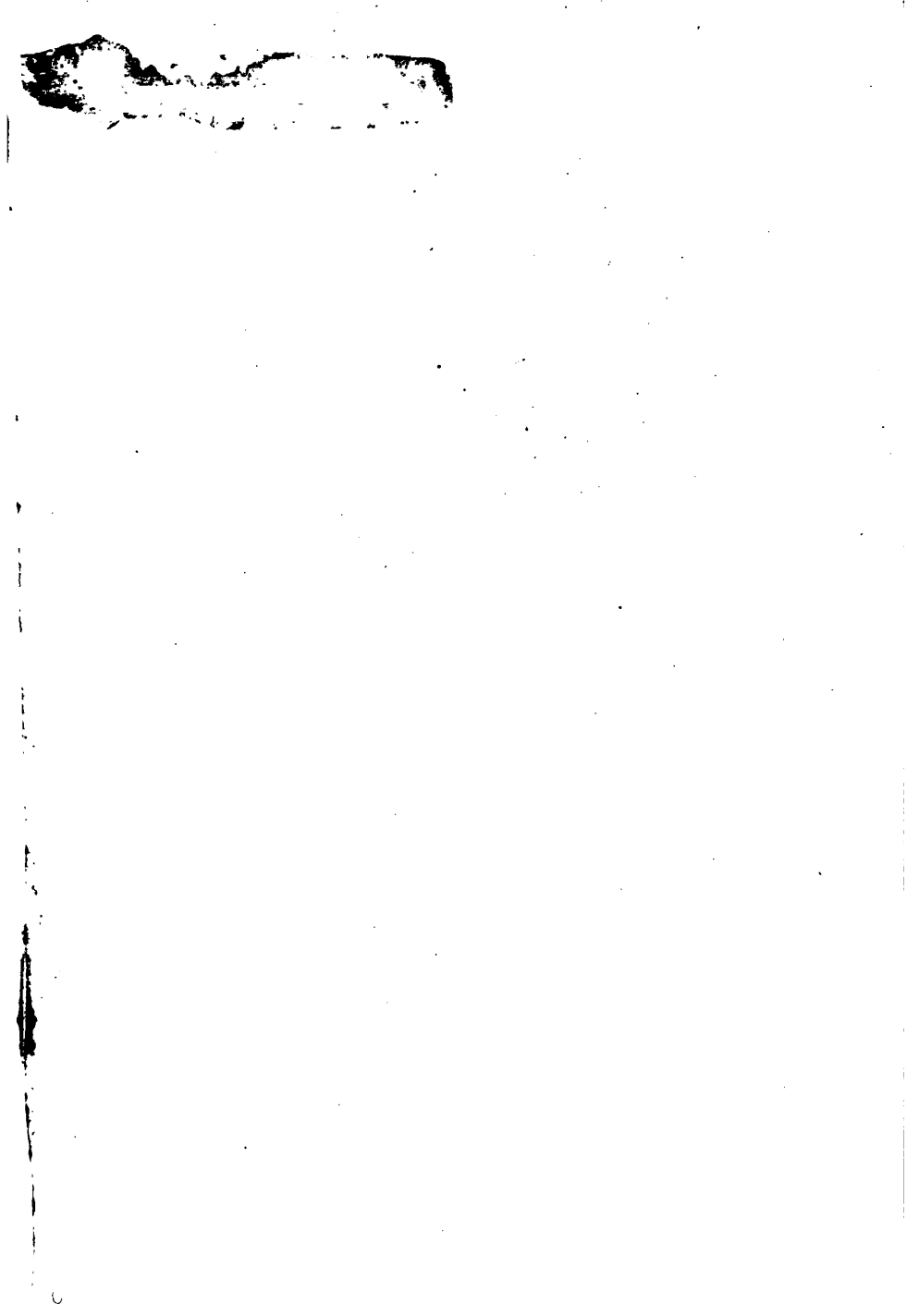
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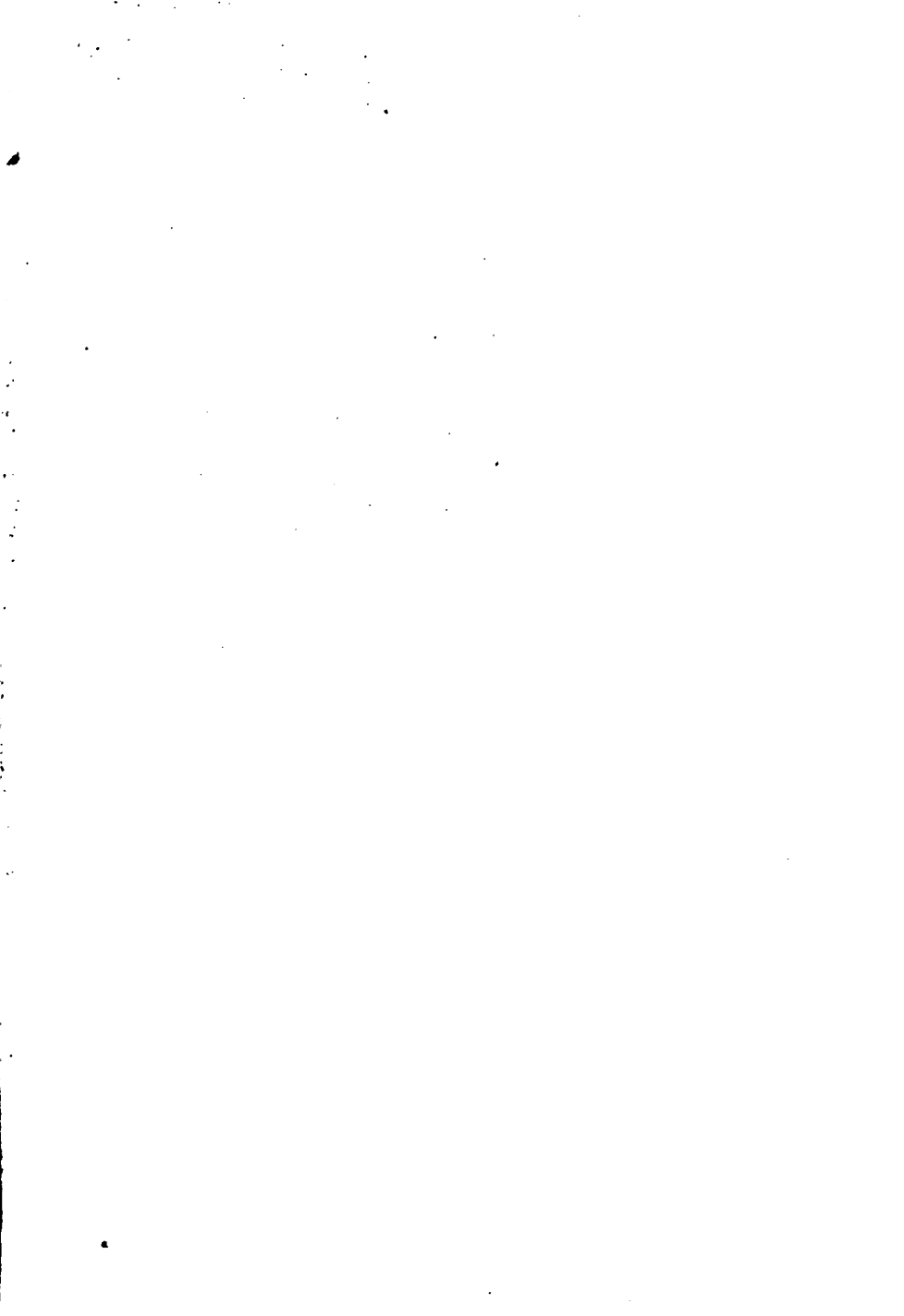














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⊙ RAILWAY SECRECY  
AND TRUSTS

BY

JOHN M. BONHAM  
AUTHOR OF "INDUSTRIAL LIBERTY"

;  
NEW YORK & LONDON  
G. P. PUTNAM'S SONS  
The Knickerbocker Press  
1890

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## PREFACE.

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IN dealing with the subject of railway secrecy and its relation to Interstate Commerce legislation, it has seemed to me to be necessary to make frequent applications of the fundamental rule of equal industrial liberty. Whilst some repetition is thus employed, if this conduces to a better understanding of the subject I may hope it will be overlooked.

I do not wish to be understood in any thing I say as favoring hasty remedial legislation. I am quite aware that sudden dealing with even great and real evils often involves grave disturbances in the body politic, and may seriously affect rights which are in no way responsible for the existence of these evils. Moreover, any legislation upon so comprehensive a problem, to be thoroughly remedial, must reach its adaptations through slow and tentative means. My aim is rather to contribute, as far as I can, to a better understanding of what, in my opinion, constitutes the chief evil of railway management;

and it has seemed to me proper to divest the problem, as far as possible, of the consideration of mere detail, in order that thus I might the more clearly indicate the foundation upon which reform should rest, and the direction in which, by deliberate stages, it should progress.

JOHN M. BONHAM.

NEW YORK, January 1, 1890.

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# RAILWAY SECRECY.

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## CHAPTER I.

### THE TRANSPORTATION PROBLEM.

Fundamental Principles—The Relation of Trusts to the Problem—  
Two Classes of Trusts—The Permanently Vicious Elements in  
Trusts of the First Class—Secret Alliances with the Railways—  
Trusts of the Second Class ; Their Tendency to Destroy Them-  
selves—Illustrations—Corporate Form and Amount of Capital  
not in Themselves Necessary Evils—The Tariff and the Trust—  
Strikes and Corners—The State and the Remedy.

THERE is one method, and I think only one, that will enable us to arrive at an ultimate and comprehensive realization of the transportation problem. It is to subject all expedient and intermediate policies to a rigorous application of fundamental principles. This method is not fraught with any great difficulty. These principles are themselves not abstruse or hard to understand ; nor is their application to the problem difficult. Moreover, the remedial process which is thus invoked, so far from involving

any surrender of industrial activity, or from lessening any true industrial advantage, will rather tend to stimulate a more wholesome growth, and at the same time secure more permanent and more widely diffused results.

Let us assume that what we need above all things, as the first condition of political and industrial well-being, is a republican government, not only in form, but in essence; a government with all the sanctions that are necessary for political freedom. Let us assume that this political freedom means the real industrial equality, before the law, of every citizen; his equal security in person and property. And in order that my meaning as to what constitutes equal industrial right may be entirely definite, I will say that such right does not pre-suppose any equality among men in respect to individual skill or business capacity; nor does it have to do with the amount of individual or associated capital. It does import the exactly equal right of each citizen to the exercise of the skill with which he may be endowed, and to the employment of the capital of which he may be possessed. Any organization, political, corporate, or associate, which tends to interfere with industrial equality, must submit to such restraint as is necessary to make its methods consistent with this equality; and this restraint will have to be

secured by the State through constant inspection and regulation.

These points being assumed, the next step will be to analyze the mischiefs to be corrected—those specific practices which are to be judged by this equal right,—and I may say that as we progress in this analysis it will be found that some at least, and it may be many, of the incidents of industry which we have been in the habit of treating as political and industrial evils are, in fact, not evils at all; and that some of the other incidents which are real evils, and which we are accustomed to regard as necessary and unavoidable, are evils which can be extirpated by the application of the principles suggested.

Taking, then, as a postulate, equal industrial right before the law,—and taking it not as a mere sentiment, but as a practical measure to be definitely applied to our industrial relations,—I will first endeavor to make an analysis of those devices which are called trusts; then of the system of transportation in relation to certain of these trusts; then of the whole system of transportation and trusts in relation to the fundamental principles of equal industrial right.

I am fully aware that there are innumerable instances of secrecy and evasion in railway management which are unconnected with trusts. These I shall notice hereafter. At present I

choose to make use of the trusts in order to indicate the qualities of the problem, because some of them afford the most typical illustrations of the last and greatest menace to industrial liberty.

Trusts have not yet been properly discriminated, and such a discrimination is necessary to a correct understanding of them. The name has been applied to a variety of artificial organizations which agree only in their outward appearance, behind which there are often essential differences. Some of the trusts have in them permanently vicious elements, whilst others, although not by any means harmless in their effect upon political right, are so incapable of working prolonged and serious mischief, that they may be left to the usual methods of relief or to their own inevitable dissolution.

( The trusts which we have principally to consider (and they comprise nearly all) are those organized for dealing in commodities which are mainly transported by rail. ) It will be found upon examination that the essential differences between these different trusts are to be ascertained, not by their names or external characteristics, but by their internal structures; that is to say, only by a careful study of their inward workings. In seeking, then, to analyze these trusts, with a view of ascertaining their

relation to the transportation problem and to industrial right, we may group them in two general classes.<sup>1</sup>

The first class embraces all trusts which, having and maintaining secret agreements with those corporations which transport the product from producer to consumer, are by this means enabled to exert an arbitrary control over the industries with which they deal. Under this class come such trusts as the Standard Oil Trust, the Cattle Trust, and the Cotton-seed Oil Trust.

The second class embraces those trusts which do not depend upon secret relations with the transporter, but which aim, through combination, to secure the unified possession and control of the whole of any particular industry, and then by the exercise of the power secured through this combination, to repress production and competition, and thus to enlarge the margin of profit. Under this class come such trusts as the Salt Trust, the Rubber Trust, the Lead Trust, the Sugar Trust, the Carpet Trust, the Coffin and Undertaker's Supply Trust, and the

<sup>1</sup> Besides these trusts, there are those which are organized and conducted in municipalities, such as the illuminating-gas trusts. There is also another trust which is organized for monopolizing natural gas—the Natural-gas Trust; but as these are not related to the subject of railway transportation, and as the discussion of them would rather tend to complicate the subject, I have chosen to omit them.



Dental-tool Trust. Some of these aim to control products which have a tariff protection.<sup>1</sup>

I will take the Standard Oil Trust as a typical example of a trust of the first class. The Standard Oil Company, from which it developed, in the early history of its organization had a capital which consisted chiefly of power conferred upon it by two agreements, through which it obtained secret rebates from the principal trunk lines, not only for the shipments of oil which it made, but also for the shipments made by its competitors.<sup>2</sup> So equipped, this trust aimed to paralyze competition. By its capitalization of this power it has been enabled

<sup>1</sup> So far as I have been able to obtain information concerning the particular trusts which I have enumerated as belonging to the second class, I cannot find that any of them depend upon secret alliance with the transporter. If, however, any of them do, such as do would of course fall under the first classification.

<sup>2</sup> Mr. A. J. Cassatt, third vice-president of the Pennsylvania Railroad, as a witness in the case of *The Commonwealth vs. The Pennsylvania Railroad et al.*, before the Master appointed by the Supreme Court of Pennsylvania, in 1879 (see printed testimony in this case, pp. 661-737), testified, that rebates were given by the Pennsylvania Railroad and its connections to the Standard Oil Company (which is identical with what is now known as the Standard Oil Trust), varying from 49½ cents to 64½ cents per barrel of crude petroleum, for shipments from the oil regions to the seaboard, the difference in the amount of rebate being due to the difference in the points of shipment and destination; that the Pennsylvania Railroad began paying these rebates in February, 1878, and was still paying them at the time Mr. Cassatt's testimony was given (March, 1879). Mr. Cassatt also testified that an additional rebate of 22½ cents per barrel has been regularly paid to the American Transfer Company, one of the companies belonging to the Standard Oil Company, as a "commission."

to create, in twenty years, a money capital of something over a hundred million dollars. It will readily be seen that this power of itself, with but a small investment in money, was ample for the purpose of its creation. And if in addition there was another bond between the organizers of the trust and the managers of the several trunk lines, for secret participation by these managers for their individual benefit in the revenues of this trust, it is easy to see how the compact between these railway managers and the trust is assured in that security which comes from secrecy. Here then the trust constitutes a complete organization for suppressing competition through the control of, and participation in, the transportation. It is an organiza-

and that this sum was paid to the Standard Oil Company not only upon shipments made by the Standard Oil Company, *but upon all shipments of petroleum made by any shipper*. Mr. Cassatt, as a witness, also expressed the belief that the other trunk lines paid to the Standard Oil Company the same rebates and "commissions."

When we consider that the shipments of crude oil from the oil regions to the seaboard for the year 1878 averaged something more than 20,000 barrels per day in crude equivalent (see testimony of Samuel F. Stowell, pp. 124-251), and that of this the Standard Oil Company shipped at least 80 per cent., or 16,000 barrels per day, we may infer that if upon these shipments that company received even 72 cents per barrel in rebate and "commission," the total sum thus received from the trunk lines daily would be \$11,520, or, for the year, estimating it at 300 days, \$3,456,000. This sum, of course, does not include any rebates paid by any other than the trunk lines to the seaboard, and, therefore, does not indicate any rebates which may have been received by the Standard Oil Company from any of the Western or Southern roads.

tion which enables its managers to exert an immense control over both production and consumption by artificial means, and thus to take to itself an immense margin of profit. Under these circumstances the delusion in the idea that the Standard Oil Trust is entitled to approval because of the cheapening of the product in which it deals, ought to be quite apparent. While it is undoubtedly true that oil has gradually and persistently become cheaper within the past twenty years, it must be obvious that this cannot be due to a secret process which the Standard established for the purpose of exacting the largest possible margin between the producer and the consumer. It cannot be one of the motives of a trust to cheapen, where its sole reason for being is to exact an artificial margin of profit. The process by which the Standard Oil Trust has accumulated over a hundred million dollars within twenty years, with little or no capital to start with, has been one which tended altogether toward preventing cheapening. If this monopoly had been absolute, and competition had been entirely annihilated, there would have been but little reduction in the price of oil; the essential motive of aggrandizement which inheres in this trust would have effectually prevented it. Prices have fallen then, not by any

act of grace of the Standard Oil Trust, but through competition, which, with all its power, that trust could not entirely destroy. The competition which existed in the producing field, the competition which existed in Russian oil-fields, and the competition which was exerted by the few independent refiners who persisted notwithstanding the heavy odds against them; these have been the forces that have accomplished the cheapening. It has followed just as lower rates in railway transportation and lower prices in the iron and steel industry were brought about—not by the wishes of those who made artificial discriminations, or restrictions, nor, indeed, by the wish of any of the competitors themselves; but under, and by force of, a law which operates whenever its operation is not interfered with. Wherever the margin of profit appeared, there, notwithstanding all disadvantage of discrimination and restraint, competition asserted itself, and its inevitable effect was to cheapen. It will be seen, then, that from the very nature of things, monopolies never seek to reduce prices. Their main work is devising means to prevent it. They can never be beneficent. The very statement that a monopoly, which secretly tries to kill off competitors with the obvious purpose of compelling the consumer to contribute to its gains, can lay

claim to the credit of promoting cheapness, seems little less than grotesque. When monopolies become altruistic, these efforts at cheapening may be looked for, but not before. With like reason it may be said that, where it is assumed by monopoly that it tends to increase skill, there is a similar delusion. Skill is created and stimulated by competition. Wherever monopoly is dominant, the incentive for improvement is deadened. It is only when competitors contend with each other for the favor of the consumer that they are stimulated to attract that consumer by presenting him with wares both skilfully and cheaply made.

Overlooking for a moment the question of the means by which the Standard Oil Trust acquired its immense capital, and assuming this capital to have consisted of an actual investment of money, let us seek to ascertain the essential vice of the organization. The possession of large capital, where it is properly acquired, signifies no iniquity. Where the conditions of success are just and equal, there such success, and accumulation resulting from such success, only indicates a pre-eminence of skill, sagacity, and honesty in him who has attained it. There are numerous instances in which large accumulations have been so made. They add to the nation's wealth. They indicate its well-

being. If one man excels in a race where all is fair, it is because he has those qualities of physical vigor and fleetness which properly entitle him to the victory. Nor is there any necessary danger to the common industrial right in the fact that the possessors of accumulated wealth have their accumulations invested in corporations. Corporations may be conceded to be convenient for conducting large enterprises; at any rate it is certain that if they are conducted in accordance with industrial right, they will produce wholesome industrial growth. Nor is there necessarily any danger in the mere fact that a number of such corporations are held in unity of possession. If the methods in the use of capital, or the methods by which the corporate structure is managed, are legitimate, and do not infringe the equal industrial right, they are not evils.<sup>1</sup> To take a particular instance: if the

<sup>1</sup> I have lately seen two essays upon the uses of rich men. In one of these, rich men were set forth as unmitigated political evils, and in the other they were treated as blessings to civilization. In neither, however, was any account taken of the means by which the wealth was acquired. It seems to me it ought to be plain that it is not the simple possession of riches that constitutes either a threat to our institutions or a furtherance of them. What we need to look at first of all, is the methods by which fortunes are acquired. The influence of men who acquire fortunes, is very likely to be exerted in the direction of the methods by which those fortunes are made. The statesman who has made a vast accumulation through railway plunder, and afterwards has secured public office by reason of his money success, is not likely to be either a sound economist or an elevated moralist. He is not



Standard Oil Trust were merely an aggregation of corporations following the plain business of refining and marketing oil in open competition with other refiners ; if the advantage of having larger capital than its competitors were its only advantage,—that is to say, if these competitors had the equal industrial rights to which all industries without respect to the volume of capital are entitled ; and, especially, if these competitors had equal facilities for reaching the consumer through a common means of transportation, then these competitors would receive no injury to their business that they could complain of ; nor would they be likely to complain. Certainly the evil of the Standard Oil Trust does not consist either in its name or in its formal structure as a trust. Although in a condition of freedom these would probably not exist as they are, we may, nevertheless, concede that they may be allowable modes of conducting

likely to abandon the habits and modes of thought and action through which he made his money. He will rather cherish these. Therefore he will not be one whose example will be wholesome to the rising generation. On the other hand, a man in industrial pursuits, who has made his fortune by the exercise of legitimate skill, prudence, and sagacity, will probably be found to be a good economist as well as a man of moral quality, and his example and influence will be likely to be altogether wholesome. Whilst there may be exceptions, then, it may be set down as a rule, that rich men who have pursued wholesome means in getting their wealth will have a wholesome influence ; and rich men who have pursued unwholesome methods in getting their wealth will have an unwholesome influence.

an organization for large enterprise. We may conclude generally that wherever an enterprise, whether corporate or individual, is conducted under the law of industrial equality; where those who manage it cannot employ secret artifices to prevent their competitors from reaching the consumer and pursuing the same business upon equal industrial terms,—there the form or the name of the organization is of but little significance.

These exterior considerations eliminated, we shall find the whole vice of this trust to consist in the fact that its secret relations with the transporter enable it to block the way of its competitors in their efforts to reach the consumer; and not only to do this in occasional instances, but to do it systematically and continuously. I have said that if one man excels in a race where all is fair, it is because he has those qualities of physical vigor and fleetness which properly entitle him to the victory; but it must be seen that if he has gained the goal by secretly maiming or drugging his competitor, he demonstrates nothing but his superiority in craft and cunning. Notwithstanding the latest efforts of the Interstate Commerce Commission to preserve equal right to competitors, the Standard Oil Trust is now effectually obstructing refiners of Pittsburg and the interior in their efforts

to get to the seaboard to reach the consumer.<sup>1</sup> Under these circumstances it must be plain that the Standard Oil Trust may abandon its name and its structure, as the Cotton-seed Oil Trust is doing or has done, or it may take to itself other protean shapes. All this will not of itself change its character or its method, or lessen its influence in obstructing its competitors' right of way to the points of consumption.

I have assumed, for the moment, for the sake of illustration, that the capital of the Standard Oil Trust was not acquired by secret abstraction, but by actual investment; this, however, as I have heretofore shown, is not the case. That particular and enormous capital could not have been acquired by one company or organization through legitimate refining. Nothing

<sup>1</sup> Besides the secret aid derived from the railways, the Standard Oil Trust has another element of illicit strength which has not yet been touched by Interstate Commerce legislation. This trust is the sole owner of several quasi-public corporations—pipe-lines for transporting oil from the wells in the oil region to the seaboard. Whilst these pipe-lines are essentially common carriers, they carry no oil except for corporations or firms belonging to the trust. Against an evil such as this even the Russian government has provided. The joint Council of the Ministries of Finance and State Domain, in setting forth the conditions upon which a concession would be granted by the Russian government for the construction of a pipe-line from Baku to Batoum, demand, among other things, that the pipe-line shall serve the public as a means of transportation, and that the owners of the pipe-line shall *not* be permitted to engage in the business of producing, refining, or trading in petroleum products.—*The Monthly Petroleum Age*, for April, 1887, Bradford, Pa.

less than the secret control of transportation, the participation in that transportation, and the suppression of competition could have brought about such an aggregation under one ownership. Yet this immense capital is not, of itself, as I have said, the evil. Great as this accumulation is, it would not even now be sufficient to prevent the growth of independent refining industries and their natural diffusion, if secret bargains with the railways were prevented; for competition is a persistent factor in trade—a persistent law of nature,—and the normal advantages of volume of capital will never annihilate it. Whenever the advantages of ownership are as secure to the smaller holder as to the larger, and industrial rights are preserved in equality, such competition will invariably arise. Where an independent refiner with a small capital can be assured of this security, he will come to share the trade, and the business will move towards diffusion of ownership, and the power which will confer supremacy will not be magnitude of capital. It will be the ability, through skill born of competition, to make and to continue to make the product, and to deliver it to the consumer in open field, at less price than it can be furnished by any other competitor.

What I have said of the Standard Oil Trust may be said with equal truth of the Cotton-

seed Oil Trust and the Cattle Trust. It is not by reason of their forms or their names that they accomplish the mischief. It is their hidden relations with transportation which is doing this mischief. Extract the power which these relations confer, and the form, the name, and the magnitude will not be dangerous. On the other hand, so long as these organizations, under whatever name or formal appearance they may exist, can maintain secret relations with the railway officials, so long will their vices continue. During the past summer, a senatorial committee, of which Senator Vest was the chairman, undertook to investigate the secrets of the Cattle Trust. This committee was clothed with all the authority which the Senate could confer upon it. What did it find? I cannot state with positiveness the result of its efforts, for the committee has not yet made its report, but, from the public statements which have been made of its progress, it appears that the members exhausted the limits of their authority without reaching any secrets. It is not unlikely that, as the efforts of this committee were directed to investigate the trust, instead of the quasi-public railway, there were some valid legal objections in the way of its investigation. The effort at senatorial inspection might more appropriately have been made by investigating the

management of those railways which are furnishing the secret advantages to this trust ; but even had this been tried, it is probable that the inquest would have been insufficient, since it may be set down as certain that a well-organized and systematic plan of secrecy can only be exposed by a well-organized and systematic power of inspection ; that, indeed, the power to investigate must be more far-reaching than the power to conceal ; and such a degree of power the committee did not have.

I will now briefly examine the second class of trusts named at the beginning, in order to mark the contrast between them and those just discussed, and to show more precisely that it is the relation of the trusts to the railways that produces the grave evils. This class embraces those trusts which do not depend upon railway alliance, but which aim by combination to gain the entire possession and control of any particular product with the view of repressing production, and thus making the margin of profit larger.

The broad distinction between the trusts of the first and second class is, I think, easily perceived. That which is common to both is the disposition to obstruct or overcome normal competition. The essential difference between them consists in the different kind of power which each has for accomplishing this end and



for persisting in such accomplishment; and this difference is found in the fact that whilst the trusts of the first class control the avenues from producer to consumer, through secret alliances with the railways, those of the second class do not.

The industries which a trust of the second class aims to appropriate are usually conducted at many separate places. While a trust of this class may succeed in taking control of such an industry, yet having no such secret relations with the transporter as enables it to prevent any competitor that may arise from reaching the consumer, it has but a temporary power for exclusion. I do not mean to imply that a trust of the second class, moved by the motives which I have indicated, is not mischievous. It undoubtedly is so, just as "corners" and market manipulations are mischievous. Its organizers may suddenly buy up and absorb all competition, and thus for a time hold exclusive sway and make large gains; and by making the prices exorbitant it may in this way oppress the public. But there cannot be any permanency to its power so long as the way from producer to consumer is kept open to all alike: for whenever a large perceptible margin of profit appears in any industry, it immediately, of itself, invites and encourages competitors to share that margin.

The competition will always appear wherever producers can reach consumers on equal terms, and such competition will finally defeat the artificial combination.

A trust of the first class, such as the Standard Oil Trust, meets and deals with opposition from competitors in a very different manner from that which any trust of the second class can employ. It has characteristics which make it more of a militant than an industrial enterprise. It deals in products which are transported in large bulk. The amount and value of transportation are of greater importance to it than is the value of the products in which it deals; for the illicit employment of freight values constitutes its chief power in its warfare and its chief source of profit. It is thus enabled to derive its very ammunition and supplies from its enemies, the competitors. In the secret processes of weakening them, it may extract sufficient money in freight rebates and discriminations to enable it to buy their whole business when they are thus weakened. It thus weakens its competitors without exhausting itself. But a trust of the second class having no such railway alliance has no such power. When it institutes abnormal, in order to defeat normal, competition, it is constantly weakened through the losses of that competition, since

these losses fall upon the trust just as they do upon the competitors; and if this trust proceeds thereafter to absorb these competitors, it becomes by such absorption surcharged with new burdens of unnecessary plant. Nor does such absorption prevent a recurrence of competition.

Those trusts of the second class which seek to control industries having a tariff protection, form no exception to the rule. A trust which is called into being by such tariff protection will doubtless serve to illustrate the solecism of a high protective tariff. It does this from the fact that its office is to interfere with the stimulus and growth of the manufacture which the government tariff is intended to encourage. Such trusts as the Salt Trust and the Sugar Trust deliberately aim to suppress the growth of the manufacture in which they deal by curtailing its production, and they aim to do this solely in order that they may appropriate to themselves the largest part of the bounty which the government has given presumably for the very opposite purpose, viz., to encourage the growth. But it must be obvious that such a trust, lacking as it does the power which is conferred by secret alliance with the railways, to obstruct the way from producer to consumer, cannot continuously prevent outside competition from contesting its profits—at least within

the limits of our own country. Such trusts, then, necessarily cannot have the permanency which characterizes those of the first class. Their effect, in the long run, will be to enlarge competition and thus to defeat themselves.

The extent to which a trust of the second class may hold excessive profit is limited in duration by the time it will take for the men skilled in the art—that is, men who are thrown out of employment by the artificial lessening of production—to organize capital and start a new enterprise, in order that they may compete for these profits. For the principle of competition, as formulated by Adam Smith, is, “that profits in any business cannot permanently remain above the general rate of profits, for the reason that the influx of new capital into the exceptionally profitable business will be sure presently to reduce it to the normal condition.” We have had numerous examples of this in our current industries within the past twenty years. The Bessemer steel business is a conspicuous one. When the profits in the business, through the tariff, were exceptionally large, and there was an unusually large surplus of money seeking investment, this attracted so many competitors that the whole volume of profit, including the bounty of the government, gradually fell, in the interest of the consumer, to a point where

for a long time but little profit to the manufacturer was left. This took place notwithstanding the fact that during its progress a combination was formed to limit production in order to keep up the profits.

There is no disposition so common as that of seeking, wherever profits appear, to share them. This in industry is competition. It always occurs by the working of a natural law which, in a free field, tends to develop the highest skill in manufacture, and thus to produce the greatest cheapness and the largest diffusion of the product for man's benefit. This emulation is so active and constant that it will arise and contend for perceptible profits, even when the odds are greatly against it. It has done so in the oil business, even at times when sure bankruptcy stared the competitor in the face. In a free field it does so until profits are reduced to a minimum, and it is thus that the otherwise unguarded consumer at last gets the best product of which skill is capable at the lowest price. It will be observed that the motives of the producers do not spring from a solicitude for the consumer. Nevertheless, free competition inevitably works for his benefit; it is by economic law, and not by the producer's wishes, that the consumer is protected.<sup>1</sup> It is to this law of

<sup>1</sup> Indeed it is the case that the very men who are most active in promoting combination are sometimes, as consumers, the most apt to

competition, working its way in spite of the efforts of the producer to obstruct it, in spite of combination, in spite of theorists, and in spite of all the factitious obstacles that from time to time have been thrown in its way, that we owe the ever increasing development of industry, its widening, its efficiency, its volume, and the perfection of its processes. I think I may say, without the least exaggeration, that it is upon the operation of this law, more than any other one law, that our modern civilization depends. The only goal at which this competition finally stops, when the field is kept free, is where one competitor among all, by means of superior skill and natural advantage, is able to furnish and to continue to furnish his products to the public at the least cost and in the largest volume.

With trusts of the second class the vices are functional. Under other names these industrial evils have existed before. They arise when the public economic sense becomes blunted, they flourish when this sense is temporarily over-

contradict their own theory. A "walking delegate" of the Knights of Labor may pass through a large shoe factory, and by raising his hand produce a strike among the employés. If he thus brings about a higher price for the product of this factory, and afterwards comes to need shoes for himself or his family, he will be very likely not to go where the price has been raised, but to seek a place where competition, which has not been interfered with, has made shoes cheaper; since, with all his fancied superiority to natural law, the instinct of the consumer comes uppermost, and he will not pay a dollar for that which he can get for fifty cents.

thrown, and they subside when economic law by its own persistence illustrates the fallacy of such devices. Like the "South Sea Bubble," the "Tulip Craze," and what is known in history as the "Mississippi Bubble," they are instances of the recurrence and prevalence of delusion.

It may be set down as a safe rule that resort to specific legislation for the cure of the functional evils which disturb industry is inadvisable. The Common Law contains ample protection against such evils, and the courts are clothed with ample power to deal with them. Besides, as I have heretofore said, under the persistence of economic law, they tend to their own destruction. There is also another objection to a too ready resort to specific legislation in such matters. Such legislation may itself interfere with economic law, and when it does, it is more apt to mar than to mend. Thus, legislation with reference to speculative "corners," wherever attempted, has usually interfered with the freedom of legitimate barter; while at the same time it has not usually been effective in preventing the mischief aimed at. A period of abnormal speculation is often an indirect product of legislative interference with economic law, and the practical object-lessons taught by such violations of economic law will of them-

selves more effectually, at last, cure the evils of such speculation, than will additional legislative interference.<sup>1</sup> If the public invests in the certificates of a trust, the managers of which depend for their success upon market manipulation, and if the public comes to find that whilst the managers have secured only temporary success—that their continued efforts are followed by final and inevitable disaster through the persistence of economic law,—then this duped public will learn at length not to invest in these certificates.

But the case is altogether different where the organization which does the mischief is one upon which the State has conferred franchises which enable those in control of it to usurp the very sovereignty of the State itself. Where the managers of quasi-public corporations, such as railways, relying upon power received from the State, actuated by motives of private gain, and

<sup>1</sup> An engrosser, regrater, or forestaller, is a person described in law as one who purchases articles of food with the intention of selling them again at an enhanced price in some open market ; or as one who contracts for farm products while these products are still in the field. These practices in England were treated as criminal, and a number of statutes from Edward VI. to Queen Anne were passed for punishing those who engaged in them. When the laws which regulate trade came to be better understood, it was found that such restraint laid upon dealing, by preventing free trade in the commodities, had a tendency to discourage all trade, and to raise, rather than to lower, prices. Instead of curing, they aggravated the evil aimed at. The penal statutes were thereupon repealed by Statute 7 and 8 Vict. c. 24.



operating in secret, make alliances with one class of citizens, or with other corporations, to obstruct and defeat the industrial right of other classes of citizens, something more than the usual remedial resorts becomes necessary. Trusts, such as those of the first class, based upon illicit bargains made with railway managers, do not depend upon public confidence for support, nor are they injured when the confidence of the investor is withdrawn from them. Even when organized on so great a scale as is the Standard Oil Trust, they do not acquire their capital through public subscription, but derive both it and the effectiveness of their means from the power of the transporter for secret abstraction, obstruction, and appropriation. There is in these alliances a continuous and insidious power for evil, which is in direct contrast with that ephemeral power possessed by the trusts of the second class. The former do not contain in themselves the elements of their own destruction. Their power is lasting ; it is exerted in secret ; and it is derived from relations with those who hold franchises from the State, the illicit use of which enables them to trench upon individual right. Here is an industrial condition not contemplated by the Common Law, and one for which the Common Law does not provide an adequate remedy ; nor

is it one which the courts can correct by dealing with specific and separate instances of the evil. If it is the duty of the State to protect its sovereignty from invasion, it must necessarily control all devices which tend to interfere with that sovereignty. Such control cannot possibly be accomplished except through organized State action. I take these facts as constituting the reason for being of the Interstate Commerce Commission and for railway legislation.

## CHAPTER II.

### EXISTING RAILWAY MANAGEMENT.

Mr. Charles Francis Adams' Statement of the Case—Evasions of the Interstate Commerce Law—The Systematic Character of Railway Secrecy—Corporate Secrecy and Individual Privacy—The Opportunity in Railway Secrecy for Unlawful Discriminations—The Failure of Honest Management under Existing Conditions—The Reasoning of the Railway Managers in Justification of Present Methods—Its Effect upon Business Morals—The Origin and Evolution of the Existing Status—The Impossibility of Reforming the Inherent Evil of Railway Management by those in Control of the Railways.

WHAT I have set forth as the more permanent and dangerous qualities in trusts of the first class, is intended to illustrate the last and greatest evil emanating from railway secrecy; but other evils which existed in railway management before these trust schemes came into being, still exist and grow, and of these it is necessary briefly to speak.

Mr. Charles Francis Adams, in one of his latest utterances, uses concerning these evils language very much stronger than I as an outside observer would choose to employ. He says:

"The dishonest methods of rate cutting, the secret systems of rebates, the indirect and hidden payments made to influence the course of traffic resorted to or devised during the last two years, I do not hesitate to say are unprecedented in the whole bad record of the past. . . . Yet among us railroad men the fact that these things are done is notorious. It is all part and parcel of that sneak-thief and pick-pocket method of doing business, which has become a second nature in certain grades of railroad service."<sup>1</sup>

Mr. Adams charges the growing degeneracy of railway morals in part to those amendments of the Interstate Commerce legislation which forbid pooling and discrimination in relative rates between the long and short haul. This charge I shall notice hereafter. I cite the passage now only to show the conceded existence and growth of the evil.

I assume that a consideration of the effects of railway secrecy is of transcendent importance, not only because of the vicious practices which secrecy fosters and encourages, but also because the right of secrecy, if it exists, is an effective bar to a complete study of the problem. It

<sup>1</sup> "The Interstate Commerce Act : Its Operation and its Results." An address delivered before the Commercial Club of Boston, December 15, 1888, by Chas. Francis Adams, (Rand Avery Supply Co., Boston, pp. 3-4.)

lies across the threshold of the problem. It makes clear solution impossible, because it prevents the use of the factors which are necessary for solution. Secret methods of any kind have no place in a republic where they may by any possibility interfere with the industrial equality of all the citizens.

As far as concerns the citizen as an individual in his social and political relations, it would be almost impossible to over-value the right of privacy and the essential part which the maintenance of this right plays in his social and political well-being. That a man's house is his castle; that general warrants are illegal; these and kindred doctrines of the Common Law only epitomize the account of the struggles by which the Anglo-Saxon race sought to work out the problem of individual liberty. From the application of these principles to our modern civilization, we have derived certain other guards to individual and political privacy. Thus, the secrecy of the ballot is a protection which is intended to enable the citizen to exercise the fullest freedom of his choice. It is in recognition of these principles also, in certain limited and well-defined spheres of the government, such, for instance, as in the conduct of foreign affairs, that secrecy has a legitimate place. Here there is no motive which tends

to impair the right of any citizen or class of citizens of the country, and the practical reason of this State secrecy is that other nations might take advantage of publicity. Unguarded publicity under these circumstances would be a national weakness. Besides this, whilst we all recognize that secrecy plays a proper and an important part in military movement, we know that militant conditions are entirely distinct and different from those of industry. After all this is considered, it may be set down as an invariable rule, that there can be no secret methods employed by a republican State, or by any agent of such State, by which one class of citizens receives privileges or immunities at the expense of another, and that here it is one of the first duties of sovereignty to prevent the employment of such methods.

Not a few reformers have suggested a correction of railway abuses by legislation which shall hold the stockholder financially responsible for corporate mismanagement, on the ground that the evils consist largely in speculation and manipulation, leading to disastrous results. But I think observation will show that the defalcations and bankruptcies of railways, although they have here and there entailed hardships upon creditors, are of small importance as compared with the industrial evils produced by

secrecy and indirection in their management. The great majority of the railway corporations in this country have been, and are likely to be solvent, and even with unthrifty management, their immense corporate power, employed in secret alliances with trusts and parasites, has enabled the managers to postpone or prevent their own insolvency and the insolvency of their roads, by placing the burden of their misdeeds upon dependent industries. When insolvency does sometimes overtake these railways, the stockholders instead of being responsible for the result, are in common with the public, the victims of dishonest managers, and they belong therefore to a class that in common with the public needs protection. Now the first step towards such protection will clearly be to bring to light in detail the secret processes by which these disastrous results are brought about, so that the public may understand where and how its rights are invaded, and the stockholders may learn how their interests are injured or ruined. Such an end will not result from merely giving the power to suitors to make stockholders, who become victims of railway mismanagement, responsible for the secret machinations which produce disaster. The secrets of railway management brought to light, the evil can be located exactly and the remedy applied. It should be recognized as a principle, that industrial corpora-

tions which necessarily have public functions, can have no right to secrecy in the transaction of their business with the public; that their records, so far as they affect this public, ought to be as fully open to inspection and scrutiny as are the public records of the State. We all know how readily the defenders of quasi-public corporations fall back upon what is called the constitutional right of privacy, but any true analysis of the Constitution with reference to the quasi-public corporation must show that the constitutional right of privacy was meant for the individual citizen—meant to guard his personal and private and political status—and that it cannot be construed to confer immunity from investigation upon any factitious institution, which, from the inherent necessity of its being, tends to impair or destroy this individual right. A corporation is not a human being. Its domination was not contemplated by the Magna Charta, nor by the Bill of Rights, nor by our Constitution. It is essentially artificial; and when it is treated otherwise, the treatment inevitably mars those rights which were contemplated by the Magna Charta, the Bill of Rights, and the Constitution. If a corporation with franchises and powers derived from the State can secretly build up the interests and industries of one class upon the bankruptcies of another, and maintain immunity from examination into



the means by which this is done, the Constitution cannot be other than a warrant for corporate oppression and tyranny. If the quasi-public corporation is thus the supreme object of the government's solicitude, that solicitude involves neglect of the individual citizen, both as to his right of privacy and his right of property. A rate of freight, then, which a railway corporation establishes for the performance of its service to the citizen, is essentially a public matter and cannot be a legitimate secret. It affects every man's business, either directly or indirectly. It is therefore every man's right to know what it is. If secrecy in this matter is conceded to the corporation, even though it does not immediately confer the right to bankrupt one citizen's business by building up another's, it at least affords the corporation the opportunity to do so, and the right to keep the secret is substantially an invitation to make use of the opportunity. From whatever point we look at it, we shall find that secrecy lies at the bottom of corporation tyranny, and that the correction of this must mark the very first step to any adequate reform.

Hitherto the corporations have succeeded in the courts in maintaining this secrecy by judicial sanction.<sup>1</sup> On the other hand, whatever progress

<sup>1</sup> *Boyd vs. U. S.*, 116 U. S., p. 616; *Kilbourn vs. Thompson*, 103 U. S., p. 168; and in the application of the Pacific Railway Commis-

the Interstate Commerce Commission has made towards bringing to light the evil of railway mismanagement, has been accomplished by such search as it was enabled to make with its limited power, into the secrets of mismanagement.

The vices of railway management lurk, then, in secrecy—in organized secrecy ; for this secrecy is part of a *system* whereby a corporate franchise, conferred by the citizens for their benefit, is operated for unlawful ends. Dishonesty, born of this secrecy, is an essential part of the system. I say it is an essential part, because it has become a prime condition for success in the rivalry among the different corporations.

Let us assume the owners of a large trunk line to be in search of an honest president, and that, in their search, they regard intrinsic, and not merely extrinsic, honesty as the necessary standard. Let us assume that they find a man who answers the requirement. He is one who places honesty even above expediency. He takes control of one of the great trunk lines, thoroughly impressed with a sense of his duty as an intrinsically honest man—first, as a trustee in his relation to the State from which the franchise was received for the convenience of the citizens, to deal justly with the citizens; and,

sion to Circuit Court U. S. for the Northern District of California to compel witness, Leland Stanford, to testify.—Fed. Rep., p. 241.

second, in his relation as trustee to the stockholders, as a guardian of their interests, and as one who is to render to them the due earnings of the road. In entering upon the duties of his office he finds competitors carrying freights from Chicago to New York at less than the cost of carriage, and recouping their losses by exactions from patrons at local points; and where the power of the road is supreme at these local points, making such exactions excessive. To meet this condition, it plainly appears that like action is necessary for him. In other words, it is necessary for him to rob his local patrons in order to meet the loss incurred in carrying freight at less than cost in abnormal competition. He finds officers of the competing roads entering into secret alliances with individuals and corporations, by which they build up the industries of some and bankrupt those of others of the citizens, sharing as individuals in the profits that are made by the favorites. His ideas of justice and honesty forbid that he should exact from his local patrons any contributions to meet losses which those local patrons have had nothing whatever to do in creating. He refuses to enter into conspiracies that will render secret aid to one class of citizens and bankrupt another. But what will be the result of following these ideas of justice and honesty? It will be inevi-

table loss of business, and, if persisted in, the inevitable bankruptcy of the road.

If what I have thus stated be a fair illustration of what would be the practical result of railway management if strict justice and honesty were pursued in the details of that management, I think we may set it down as a rule that that honesty, which I have designated as intrinsic, to distinguish it from the extrinsic, does not and as a matter of fact cannot prevail in the present system of railway management. The higher quality of honesty is not to be looked for in any system where such honesty, however accompanied by executive ability and business skill, moves towards inevitable bankruptcy and business disgrace, and where, on the other hand, craft and dishonesty as surely lead him who practises them to success. Railway managers understand very well the fact of this present low standard; they all accept it as a fact. It is what causes many of them to conclude that those who are not railway men do not and cannot realize the problem. Moreover, it is the fact that many railway men employ this as the final answer to any proposition that the moralist may make for reform. To such an one they naturally say: "If you were in our place you could not act other than as we do. Your propositions for reform, applied to this practical situa-

tion, are worthless theories. Were we to give you free scope for putting them into practice they would simply bring disaster to us. Even if you were to stand at our shoulders suggesting the specific acts of reform, and if we were to follow your advice explicitly, you must see that we should either lose our positions or bankrupt the road ; and you must see, too, that when our competitors should have taken the business from us, as the consequence of our pursuing the course which you would suggest, the stock-holding investor, although he might close his eyes to the malversations of the officers who appropriate part of the revenues of the road to themselves, would, nevertheless, be very alert to condemn your methods, which are so plainly impracticable that, notwithstanding, or rather by reason of, their honesty, they would produce certain disaster."

This sort of reasoning has been quite effective. It is sometimes convincing even to the class of economists who fancy themselves practical. There is without doubt also a much larger class of well-meaning business men who, while they feel sure of the correctness of their reasoning and of their conclusions, have in reality become hopelessly confused with the ethical phases of the railway problem. If, in the beginning, they are possessed with a clear conviction that skill,

sagacity, and honesty are the true requisites for success in every business, in the progress of their examination of the railway problem they come to discover the inevitable difficulties and disasters which environ and follow the resolutely honest railway manager. When in their further investigation they come into intimate association with railway men and hear arguments from these men, such as those that I have indicated above, they become profoundly impressed with the uniform power of what begins to seem to them like natural necessity; thus realizing how continuously and rigorously the system controls the individual, they come to believe that there is an inherent antagonism between intrinsic honesty and practically successful railway management. Their corollary from all this is that railway management is not properly to be measured by the same tests as those which we would apply to the conduct of men in ordinary employment. Having arrived at this point, they look back over the mental processes by which they reached their conclusions, and fancy that they themselves were theorists when they undertook to make a rigorous standard of honesty, and that all who seek to insist upon such a standard are visionary. The more they reflect upon this the more fully they are convinced. They observe that men

whom they know to be practical—those who are in actual contact with the industry—have but one way of thinking—that is, that success can only be procured by so-called practical means, that all else is theory, and that theory means disaster. The investigators are now prepared to hear from the railway managers, and to believe that it is absolutely necessary for the railway managers themselves to regulate the transportation interest; that any influence from the outside, which assumes to rest upon general principles, must be a theoretic influence; and especially that it is necessary for the well-being of the industry upon which all industries depend, that the State should not interfere with the problem.

To return to the question of honesty; there are, indeed, not wanting moral teachers, well-meaning no doubt, but who, having formed their judgment upon these appearances, would condemn the president who permitted the failure of his road, by disregarding the existing system of management. To them such a president would appear only as an unjust steward—untrue to his employers; and especially as one who has ruthlessly impaired the interests of such of his stockholders as are widows and orphans. So the inference becomes very common that in this field of business at least, in order to be strictly honest, one must be a theo-

retic visionary; in order to be practical, one must be dishonest.

When we undertake to analyze the railway manager's sense of his relation to general honesty, we shall find that it is not necessary to assume that he wishes to be dishonest; nor, indeed, that he believes himself to be so. He may simply think of himself as "a practical man," and may seek the justification of his course in what seems to him to be its necessity. He may be a bank-director, or the trustee of a private estate, and in these relations perform his duties scrupulously, because here the guards for honesty are effective and dishonesty entails disgrace. He may also be exemplary in his social and domestic relations. He may be a church member, and as such may regard himself as entirely consistent, but for all this the relation between his precepts and his railway practices are, as they must be, indefinite and conflicting. Sermons may be preached to him upon the general duty of right conduct. He may attentively listen to them, and be induced by them to make large contributions for the reformation of society; but he will never be likely to realize that any thing from the pulpit is aimed at or applied to him, even though references to his conduct may sometimes be rather pointed. If any thing were to suggest



to him upon a Sunday to ask himself the biblical questions "Whose ox have I taken? Whom have I defrauded? Whom have I oppressed? Or of whose hand have I received any bribe to blind my eyes therewith?"<sup>1</sup> the questioning would not in the least degree deter him from still supporting the alliance of his road with a Cattle Trust, by which he and his associates are secretly abstracting from the owners the chief values of all the herds of the land. He will never perceive any contradiction between his Sunday creed and his week-day conduct.

When we come to consider the effect of this system upon the public mind, we shall find that it has been as insidious as the processes which produced it. Men who do not do their own thinking, take their conclusions from those nearest them who do. And when men conclude that dishonesty is necessary to industrial progress in any department, the whole unthinking mass of the people easily modify the rigor of their judgments concerning dishonesty; they condone and euphemize it, if, indeed, it does not appear to them in the guise of an industrial virtue.

But is it a fact that, in any business, success must rest upon so low a moral basis? I, for one,

<sup>1</sup> Book of Samuel, chap. xii., 3d verse.

have no doubt that it is not. The whole difficulty seems to me to arise from a confusion of appearances, from efforts to deal with details which have a veil of secrecy thrown over them. We have not been able to see through the expedients which lie about us into the principles which lie behind those expedients. We have not gotten to the bottom of the matter. Where wholesome industrial and economic conditions prevail, honesty needs never be sacrificed for success or for profitable service to the public. The fact that honesty is so sacrificed in railway management points with unerring certainty to the overwhelming power and to the inherent viciousness of a secret system which has reached its present mammoth proportions by reason of the carelessness of the guardian, the State, to control it.

In casting about in search for specific personal responsibility for the iniquities of railway management, it must be confessed that the origin, at least, of these iniquities cannot be traced to any one individual. No one railway manager at any time, now or since the beginning, can properly be charged with the creation of the system; nor even can any single combination be held responsible for its existence. In the broad sense it has been an impersonal evolution. It embraces all roads, and there is no

place in the whole field of industry where existing conditions have ruled so tyrannically, no place where the individual seems to go for so little and the surroundings for so much as here. And among all the men who enter the railway service, it is those who enter the highest grades that most feel the pressure of their surroundings. Just in the degree that an officer is clothed with authority, in that degree he finds the exercise of his power controlled by those inexorable conditions, wherein success lies only in pursuing pre-established methods and where failure as certainly results from a disregard of those methods. The first day on which this officer assumes the duties of his place, he is confronted with the question, not "What shall I do to manage my road justly?" but "What will my competitors compel me to do to manage it without disaster?" The only strict honesty that is possible in this system is that subordinate honesty which consists in the merely ministerial and functional act of keeping accounts, and this is secured as a necessary part of the system through the audit. Where a man has no choice, where his policy is a result, not of his unbiased judgment, but of his immediate necessities, we must remove those necessities and give his judgment freedom of scope, before we can hold him strictly responsible for his acts.

This system came with the first delegation of power by the grant of a railway charter. Though the evils were small and unnoticed at first, they were there. It was because they were unnoticed, because they were secret, that they grew all the more insidiously. The growth was promoted by the influence of the decision in the Dartmouth College case, which gave complete power to all corporations by construing charters as irrevocable contracts between the sovereignty and the corporations, and thereby conferring a share in industrial sovereignty upon organizations whose inherent motive is aggrandizement. Since that decision, all who have managed railways have come under this influence. Some have made readier and completer use than others of its dishonest opportunities. But nothing that any one individual or set of individuals could have done, either by example or advice, under this system, could have changed it radically. Something more than moral suasion was necessary to correct it.

Even the projectors of the Standard Oil Trust cannot, in a large sense, be said to be responsible for the inherent vices of this system. Those vices existed and flourished when that trust first appeared. The organizers of that trust followed the line of least resistance. They found a system of secret rebates and discriminations in

flourishing existence. Should they become participants of these secret rebates and discriminations, or become the victims of them? Surveying the field, and seeking to work out their own individual success with the means they found around them, they naturally chose the second alternative. Instead of becoming the victims themselves, they employed the ready-made system, and made their competitors the victims. It was because they adapted themselves skilfully to the system that they became masters of the situation. Nor can it be said that the managers of the trunk lines, when they made the Standard Oil Trust the distributor of oil freights among the different lines, were acting as free agents; for the manager of each of these lines, in a natural effort to take the volume of business to his line, had been employing devices to circumvent the managers of the other lines. In consequence of this, wars of abnormal competition prevailed. In these wars the trunk lines derived their resources from exactions upon tributary railways and upon the helpless local patrons on their lines; but even with these exactions the resources of the contesting lines tended toward depletion. In all this warfare the managers of the several trunk lines were in a continual state of mutual distrust, and compacts between them proved to be inefficient.

In their helplessness they saw the opportunity of protecting themselves from loss, at least in petroleum freights, by conferring upon the Standard Oil Trust the complete control of these freights. This was their only means of securing to each line a fixed percentage of oil freights. The common prey in this arrangement was the independent outside refiner. Yet the combination of the managers of the trunk lines with the Standard Oil Trust was not merely wanton or vicious, for it is easily seen that there were necessities which dictated it, and that these necessities arose from the antecedent conditions of the case. While it is true that there was another consideration in the arrangement, which was not based upon helplessness,—a consideration whereby the railway managers personally shared, through interest in the Standard Oil Trust, a secret division of the rebates and discriminations which were abstracted from the roads which they managed,—yet even this was suggested by the circumstances; it was in the line of development with the vices of a system which invites and makes such appropriation easy. All that may be said of the whole scheme is that those engaged in it employed existing methods to their utmost capacity. While they thus elaborated, they did not invent, the system.

The enormous power of the system itself in influencing moral standards, and its inherent tendency towards such influence, lead us to the natural conclusion that the problem in its largest aspect is not a personal one ; that it is, in fact, a cold economic question ; and that when we are looking for a solution, it is only by so regarding it that we can clearly at last reach the end sought. The examination of the problem should, therefore, be conducted in no spirit of animosity. We should remember that the men who are connected with the railway system, and who have come under its influence, are men who, considered one with another, are neither better nor worse than any like number of men taken indiscriminately. Some of them are men of great ability, but there are great differences even between men of ability. There are many in the railway service who suit this system, and whom it perfectly suits ; and it is because they suit it and it suits them that they become more influential than do those who do not suit it and whom it does not suit. When a man of conscience and principle, like Mr. Adams, connects himself with such a system, and feels, as he inevitably must, a conscientious repugnance for much that exists in it, he cannot reasonably hope by mere moral suasion to subdue into acquiescence those whom that system suits ; nor

can he safely ignore the fact that those whom it suits and who suit it are always likely to exert a more dominant influence in it than are those who, like him, find it full of dishonest demands. Whilst indeed there are a great many of the railway men who doubtless, were they in a position where honesty could be as easily practised as dishonesty, would greatly prefer the honest course, yet we must bear in mind that where a system is so potent in its operation as inevitably to distort conduct, the influences which bring about reform must be something more than those of a persuasive kind; something more than influences which consist in suggestions of restraint urged upon those who are in control of that system, and consequently in accord with it. There must be a comprehensive law with a sanction; a law which derives its confirmation from the certainty with which its terms are enforced. The power to enforce this law must be one which exists outside of and above the system to be reformed. It must be a power which is unmoved by the sinister influences of that system—which is unaffected by any motives of private gain. Moreover, in a republican government, it must be a power which is impressed with the supreme importance of guarding the equal industrial right of every citizen. To accomplish its ends



it must exercise constant supervision over, and constant restraint upon, any organization which fosters cunning, fraud, evasion, secrecy, and dishonesty. In our country this power can only be the State.

## CHAPTER III.

### PUBLIC RESPONSIBILITY FOR EXISTING EVILS.

The Desire for Physical Convenience, and its Influence on Railway Development—The Confusion of Causes and Incidents in the Multiplication of Conveniences—The Changes in Public Opinion, and their Expression in Hostile State Legislation—The Interstate Commerce Law, and the Methods Employed to Evade its Provisions—Mr. Adams on the Workings of the Interstate Legislation—His Proposed Remedy through Legislative Sanction to Compacts between the Railways—The Inefficiency of Such Remedy, and its Violation of Fundamental Right—The Corporation as an Arbiter of the Right of the Citizen—The Necessity for a Supervising Power at once Efficient and Disinterested.

WHEN we consider the almost uninterrupted continuance of vicious methods in railway management; when we note the circumstance that a few men, in control of the railways, have been able to absorb a great part of the results of industrial growth; when we see how they have managed to keep the great sum of the excess from the legitimate investor, the stockholder, and from normal diffusion among the industries which helped to create it, we cannot but be amazed that even organized secrecy should have been so continuously successful; and amazed,

too, at the apathy which has kept the public from a study of these practices.

When we come to examine the problem, however, we are enabled to discover not only that there is valid reason for this continued state of affairs and for the public apathy concerning it, but that there is also substantial reason for the fact that the general public has been, to a large degree, unconsciously responsible for it.

As I have hitherto suggested, there are many who, lacking either the disposition or the power to reason carefully, have been induced to regard the Standard Oil Trust as an organization which has exerted a beneficent instead of an evil influence, because of the incidental and superficial fact that during the progress of its growth the product in which it dealt has become cheaper to the consumer. Their inference from this fact is that all the means which are employed by that trust were necessary to produce this result, and did produce it. In like manner with the railways. Not a little has been written in the railway interest to show that the railway management has cheapened product; with the pregnant inference that this management not only sought to accomplish the cheapening, but also that all the methods which were employed—the artifices, the secret discriminations—were the

desirable and necessary means of producing such result.

The state of mind which prevents careful examination into principles and induces the unthinking to attribute the benefits of cheapness to combination, is precisely the same as that which deters men from careful examination of the general railway problem. It is the same also as that which, when certain of the evils of the railway system first forced themselves upon public notice, led men to condone those evils. This state of mind springs from an exaggerated sense of physical convenience, which expresses itself by a disposition to encourage without examination whatever increases physical comfort. Those who manage the mechanism which confers this convenience are, in a vague way, regarded as though they were its creators; and there is also a general, though rather indefinite, apprehension that a determined examination into the methods by which these assumed creators work, might result in an interruption of industrial progress, or even, to some extent, in a withdrawal of railway facilities from the public. This desire of convenience is not, therefore, favorable to accurate thought. It especially tends to cloud the perceptions of those who are not in the habit of reasoning; and there are those engaged in railway and trust interests

who realize this, and who have not been slow to take advantage of it.

When we reflect that in the past thirty years appliances for physical convenience have multiplied as never before in the history of the world, we may better appreciate the force of the influence which has kept the public apathetic, apprehensive of examination into, and apologetic for the evils of, railway management. Therefore I say that this desire of convenience, more than any one factor in modern civilization, has not only blurred men's economic vision with reference to the railway problem, but it has created a great distaste for the study of the principles of political economy and a general confusion regarding them. It has produced a persistent hopefulness and optimism in the popular mind in the presence of serious economic evils,—an optimism which to the student of economic principles has been exceedingly discouraging. It has furnished individual instances of public indifference to the disasters which have been brought upon men of high skill, sagacity, and probity through the secret discriminations of the railways; and it has also furnished instances of the approval by the public of the successes of inferior men, who have acquired great fortunes through these secret means. So overpowering has this desire for physical convenience been

that it has had to take its course. It was not until the possession of transportation facilities rendered them familiar and commonplace, and not until the evils of vicious management grew to be insupportable, that there came at last a dim realization of the fact that those associated with the management and conduct of these facilities were not after all fiat creators; that they were not even beneficent promoters; that the advantages which came to the public through their action, came not from a disposition to further public advantage, much less to maintain public right, but that these men were definitely in pursuit of their own gain; that they followed their own interests so narrowly and so aggressively as to obstruct the very results which they claimed credit for creating; and that so far as their aims and motives were concerned, the public welfare was not only not the object of their designs, but in so far as this welfare was not impeded by them, it was simply an unavoidable incident in the accomplishment of their selfish ends.

It ought then to be sufficiently obvious, in a survey of the progress of industry, that secrecy and abstraction were and are not necessary in order that we might have railways; that we should have had railways in accordance with the demands of industry if strict honesty in-

stead of loose dishonesty had prevailed in their administration; that we should have had them in prompt response to the country's demand, in sufficient number and under conditions which would have been in far better accord with civilization than those which now prevail. There would then have been a far greater sense of security for the stockholder, a far more perfect sense of confidence in the constancy of industrial law, and a far more equal distribution of the advantages which come from the progress of the railway. Fortunes which are now unwholesomely concentrated would have been wholesomely and naturally diffused. We should not then have had instances of a few men in the possession of great corporations, standing at the termini of railways, and through stratagem and by secret alliances making exactions upon the industrial activity of every individual in the country, and employing the fruits of such exactions in so enlarging their power as to come at last to be the virtual owners of immense trunk lines. Nor would these men have been able then to beguile the public into quiet acquiescence in their methods through impressing the public mind with an apprehension of their power, or with the notion of their beneficence as creators of progress. It is plain to see, also, that under such conditions we should not have

that mystification of economic principles which prevails in the common mind. We should not have theorists proposing to reform evils concerning the secret sources of which they are ignorant. We should not have reformers who seek, by a procrustean rule, to limit all accumulations; to deal with accumulation itself as the evil, without reference to the honesty or dishonesty of the methods by which such accumulation is made. We should not have those other reformers who seek to hold the victims—the minority stockholders of corporations—responsible for the secret and undefinable machinations of the directors. Nor should we now have to contend with the delusion that in order to correct the evils of railway mismanagement, it is necessary that railway transportation itself should be interrupted by the enactment of capricious and vindictive legislation.

We should be able to realize, too, that the managers of railways have not created new economic laws, nor changed the value of the old ones; but that they have made the application of the old ones a somewhat more complex and difficult thing. By the multiplication of material details which they have created, they have tended towards complicating the problem. By the conveniences which they have furnished,



they have produced an indisposition to examine into those economic laws which are violated; and by the secret methods which they have practised, they have concealed their processes.

I have said that we are beginning to have a dim realization of the true conditions. This, without doubt, indicates an advance, and when the controlling factors of the problem shall be revealed by the complete removal of the secrecy which now conceals them, we shall not only be able better to appreciate those particular instances of evil consequences, but the whole economic problem of industry, as related to the political rights of the citizens, will come to be better understood. Moreover it will then not require any great faculty for generalization to enable us to discern, as a further consequence of this secrecy, the relation that exists between the methods of railway management and those of secret labor organizations. Above all, we shall be enabled definitely to perceive that success in the management of a quasi-public corporation does not require concealment of its workings; that that domestic, political, and industrial privacy which freedom means to guarantee to the individual citizen, is not to be confounded with the illicit secrecy which so usurps the place and mars the quiet possession of this legitimate privacy.

From the first small preferential advantage granted to the favored shipper, from the first simple discrimination and the division of its fruits between the railway manager and this shipper, down to the control of whole industries built upon an organized system of abstraction, there has been a continuous relation of cause and effect—an evolution, as I have said, of present methods. The first success in dereliction stimulated the second, the second stimulated and developed the third, and so the evil grew until its pressure upon industrial right became intolerable. It was then that here and there, under exceptionally strong provocation, the public was roused to action; but this action was confined to special cases, and these were cases only in which an incoherent sentiment acted spasmodically upon a coherent and organized system. Under the pressure of excitement, moved by the weight of pressing evils, legislatures were brought to enact retaliatory legislation, but this often partook of the evils to be reformed, and aggravated instead of reforming them. As one method will stimulate the growth of counter methods, so secret associations came to flourish in all branches of industry. Delusions bred delusions, and in the failure of the retaliatory legislation to produce reform, it came to be assumed by many among the op-

posers and the defenders of corporations and trusts, that certain vicious methods in railway management were essential to its being, and that dishonesty, as I have heretofore endeavored to illustrate, was one of these.

It was here that some of the economists employed in the railway interests found their opportunity for working upon the credulity and apprehension of the public. The danger of disturbing an established system was emphasized and dwelt upon. Many were made to believe that interests which are managed on so large a scale as are the railway interests, must of necessity be free from all political restraint; that not only does a regard for the public convenience require this, but that the interests of the stockholders demand it, and that capital would not be likely to flow into enterprises upon which restraints are placed by the State. But as the true conditions came slowly to impress themselves upon the public mind through the great burden of the railway evil, the necessity for examination became imperative, and just as this examination proceeds, it teaches the fallacious and superficial character of such appeals to fear and credulity. This examination, by demonstrating the real obstacle in the way of correct railway management to be organized and systematic secrecy, shows by necessity that this secrecy, so far

from being indispensable for security of capital, is a positive and constant menace to the permanency and safety of all investment. When then, men are forced through the necessity of their surroundings to think upon this subject, they recognize that the assumption that railway management ought not to be interfered with by the State involves the concession that dishonesty is an essential of industrial growth. When the mind is relieved of these concessions and assumptions, it becomes plain that there can be no danger that investments will ever cease or be prevented by reason of the honesty of the custodian of those investments; that wherever capital may be profitably and safely invested, there capital will go, and that where there exists the means of knowing through publicity all of the conditions which surround investment, the sense of certainty which comes to the capitalist will make him all the more ready to invest; that, in a word, with secrecy removed from railway management, activity will flourish better in honest conditions than in dishonest ones, and far more wholesomely for the well-being of the individual and of the public.

The Interstate Commerce legislation which Congress has thus far enacted does not furnish the power necessary for reaching the secret practices of the railway managers, which it was

the object of the legislation to expose and to prevent. Indeed, it has not proven even sufficient to extract here and there in specific cases that information which was necessary for the determination of such cases.

Whatever differences of opinion there may be among railway men as to the vices of the system, and as to the viciousness of the methods practised, there seems to be quite an uniform objection among them to any legislation directed towards a specific examination of these methods. Mr. Adams, whilst he freely recognizes many of the evils of railway management as issuing from secret bargains and discriminations, is, nevertheless, unqualified in his disapprobation of any legislation which would take efficient cognizance of corporate methods. With most railway men he assumes that the whole reform is to be accomplished by the persons who are in control of the railway interest; that the vices of railway management are to be overcome by inculcating self-restraint among the interested parties. After reciting some of the secret practices of the railway managers, he says :

“It will be asked why the penalties of the Interstate Commerce Act are not enforced against those who thus directly and indirectly evade its provisions. The question may be asked of me, ‘Why do you not give informa-

tion, and institute proceedings under the law?' I merely say, in reply, 'that apart from a prejudice against being an informer, while I am morally sure that these things are done, I cannot furnish legal proof of them. My information comes indirectly, or at second hand; and while I have no doubt myself of its accuracy, yet if I were brought to book as to time and place and circumstance, I could not give them. The thousand evasions of the Interstate Commerce Act cannot be proved in court. Yet, among us railroad men, the fact that these things are done is notorious.'"<sup>1</sup>

Whilst it is quite true that these detailed instances of evasion cannot clearly be brought to light by any judicial process as yet provided, and that "the thousand evasions of the Interstate Commerce Act cannot be proved in court," it must be seen that even if instances of evasion could be thus proved, nevertheless in a system so comprehensive as is the railway system, these special disclosures would not correct the general evil. The railway men who are protected by a great system of secrecy will simply find it necessary, upon such special disclosure, to shift their evasions to some other quarter; to make some new bargain and continue their old methods.

<sup>1</sup> "The Interstate Commerce Act": An Address by Charles Francis Adams, p. 3. (Rand Avery Supply Co., Boston, 1888.)

When one discrimination is disclosed, a new and more subtle one will thus take its place.

Mr. Adams says, concerning some of the recent artifices resorted to since the enactment of the Interstate Commerce Act: "Names of members or employés of firms whose business it was desirable to secure, but to whom it was unlawful openly to allow a rebate, have been put upon the pay-rolls of companies at salaries equal to the estimated amount of what the rebate would have been; where the influence of a particular person was thought necessary to secure certain shipments, he has been advised that the company wished to consult him, but in order that it might do so more conveniently he must live in a house in a certain quarter—and the rent of that house has been paid by the company; where it was thought expedient to cut the rate on passenger tickets to a given point without affecting the rates to intermediate points under the Interstate Commerce Act, tickets to that point have been placed by the hundred in the hands of 'scalpers,' and they were allowed a commission equal to half the price of the ticket. This commission, the allowance of which the Act did not specifically forbid, the 'scalper' again shared with the purchasers of the tickets." <sup>1</sup>

<sup>1</sup> *Ibid.*, p. 3.

Mr. Adams thus plainly sees that the radical evils of the railway system consist in "absence of faith," "insatiable greed" and "a low sense of commercial honor." Concerning remedies, he is of opinion that "with the body politic as with the human body, a mistaken remedy only aggravates the disease." But he does not seem to me to realize that the method of treatment which he himself suggests tends to produce an aggravation of the disease through such mistaken remedy. His first great remedial suggestion is to give legislative sanction and encouragement to railway combinations (which he rather euphemistically calls "contracts made among railroads"), and then to impress upon these combinations, by persuasive words, the general duty of justice and honesty. "If," he says, "the anti-pooling provisions of the Act may not be wholly repealed, let them at least be so modified that contracts made among railroads, subjected to the approval of the Interstate Commerce Commission, for the division of competitive traffic at reasonable rates, may be binding in law; then more and most of all, encourage and facilitate any movement among those interested which will tend to raise the standard of commercial morality in railroad circles."¹

A trade combination for the division of traf-

¹ *Ibid.*, p. 9.



fic among corporations which derive their profit from a great industry,—a combination which shall be binding in law, and which may be sustained by a judicial body, involves the violation of a structural principle of political government in a free state, and one to which there can be no safe exception. While, as I have heretofore shown, such combinations in trade as those which I have designated as trusts of the second class, may sometimes be left by the legislature to run their course, and to meet their doom under the ultimate persistency of economic law, there are no trade combinations whatever which can receive the sanction of the legislature, without surrender of some part of the principle of equal industrial right. We may concede that combination might possibly, for a time, be beneficially employed even by corporate powers. But it is certainly impossible that it could be permanently so employed, and the fact remains that such combination can never be depended upon to maintain continued self-restraint among the participants, unless such restraint in some way conduces to the private gain of these participants. Continued forbearance where public right is concerned is totally foreign to the nature of such combinations, and it is the opportunity for oppression that they afford that makes them illicit, even though they were

entered into with the determination, upon the part of some of those in control, strictly to practise the larger self-restraint. Railway combinations have essentially personal ends. We cannot close our eyes to the reason for their being. Their prevailing motive is not, and cannot be, to correct evils which oppress the public. Whatever the first intention which actuates those in control of them may be, their conduct will inevitably gravitate into congruity with their interests. They will be found zealous for the correction of those evils only which affect their profits, and in a short time the equal industrial right of the citizens will be insidiously invaded in the pursuit of those profits. It has become quite common to urge that the railway, by restoring rates through combinations, would be enabled to do justice to all parties. It is not, however, a question of ability, but one of inherent tendency. If public right comes to be even temporarily secured through combination, it is so secured only by incident; it is a consideration which is essentially secondary to the whole purpose of the corporation, namely, private gain. This is not because we might wish it so, or might wish it otherwise; it is *ex necessitate rei*. Obviously, under these circumstances, if the State were to enact legislation recognizing trade combinations, and if the

judicial officers of the State were to enforce the compacts of such combinations, the legislature and the judicial officers would but become supporters of an illicit power,—illicit because it inherently tends to impair the industrial rights of the citizen.

As to what is known as the “long and short haul,” it may be observed that it is not within the power of a legislature, strictly speaking, to change geographic distances ; nevertheless, the normal and natural effect of distance can be interfered with by artificial means, and the State can confer a power so to interfere with it. Where it does so, however, the effect is merely to legalize the exercise of an artificial power ; and when such power is conferred on a corporation which is governed by its own interest, it cannot be possible that it will be judicially or fairly exercised. A legislative act making a corporation the arbiter of rights under such circumstances, is very much like an act empowering one of two suitors to determine the cause in which he is interested.

There are many instances in which the long and short haul involve questions between the citizen and the railway which are undoubtedly difficult of adjustment. This will always be the case so long as railways have local points, or so long as there is railway competition with

water routes. But difficult of adjustment as these questions may be, when we are called upon to choose between two powers as the resort for decision, we shall, if we will consider the different functions of these two powers, have but little difficulty in determining which to choose. The whole purpose of one—the State—is to preserve political and industrial equality. The main purpose of the other—the corporation—is to promote private gain ; and the choice ought to be particularly easy, when we remember that the corporations have had almost unrestrained control of the problem for over twenty years. They have worked upon it, with and without combination, during that time, and they have left it in almost hopeless entanglement.

What I have said with reference to combination of the more vicious kind applies with equal force to consolidation. This at least is the case if we understand consolidation as we understand combination—in its most comprehensive sense. In this sense, as applied to railways, it means the union of all the railway interests in the country under a single ownership, just as combination means a union of all those interests under a single control. The sole difference between combination and consolidation in this larger sense is that, whilst consolidation has a permanent unity by reason of unified ownership, com-

bination has an expedient and temporary unity by reason of provisional and temporary control. Such consolidation and combination are alike vicious because their purpose and effect are to abolish all competition and leave the regulation of transportation in the hands of those whose primary interest is private profit. Concentration of capital, however, I understand to be quite a different thing. It imports the growth of several large competing interests, as by the purchase or association of the several trunk lines. Such separate and independent growth is a natural and, as I believe, an irrepressible growth; and so long as these several lines are owned and managed independently of each other, however extensive the several systems may grow to be, it cannot result in suppressing a general competition—competition which does not and cannot exist, either in complete combination or consolidation. But I shall have occasion to refer to this subject again. I notice it now only to indicate more definitely Mr. Adams' position. He is unqualifiedly in favor of controlling the railway system of the country through what he calls "a great Consolidated Corporation or even Trust."<sup>1</sup>

I think it may be seen from what I have

<sup>1</sup> "Interstate Commerce Act": An address by Charles Francis Adams, p. 7. (Rand Avery Supply Co., Boston, 1888.)

said that Mr. Adams' suggestions involve violation of fundamental principles. In order that these suggestions may be made to stand out more clearly, I will briefly formulate what I understand to be his position, thus: We have a system of railway secrecy; Mr. Adams recognizes this system as one which from the beginning of railway industry has enabled and prompted its agents, in the pursuit of private gain, to trespass upon the common industrial right. It is a system which, he says, is characterized by an "absence of faith," by an "insatiable greed," and by a "low sense of commercial honor." It is a system the bad methods of which, during the last two years, have been "unprecedented in the whole bad record of the past." It is a system which has exhibited all these bad qualities because they are inherent in it. This system Mr. Adams would endow by law with the power of combination in pursuit of its ends, and having so endowed it, he would look for reform through an effort "to encourage and facilitate" what he vaguely describes as "any movement among those interested which will tend to raise the standard of commercial morality." He supplements this by offering the assurance that such recognition of railway combination or of railway consolidation will help to inculcate such morality and accomplish this end.

It seems to me that any one who will reflect, must conclude that men moved by insatiable greed and encouraged in the daily practising of dishonesty by a system which makes dishonesty almost if not quite necessary, are not to be turned from their courses either through extending and intrenching the system in which this greed and dishonesty thrive, or by lectures delivered to those men upon abstract virtue. Such efforts at reform seem rather like turning a hungry lion upon children, with the hope of restraining the appetite of the lion by reasoning with him, and at the same time reassuring the children by telling them that the lion is turned loose in order to give him an opportunity of practising self-restraint.

Whilst I think we may freely admit, from the experience of the past year, that the legislation forbidding discriminations in long and short hauls and combination has, in a measure, rather aggravated than removed the difficulties of the railway problem, nevertheless, I think this is plainly because that legislation has not gone far enough. Instead of dealing with the cause of the evil, it has been dealing with a few of its results, like an injudicious surgeon who hopes to cure a malignant tumor by irritating its surface instead of applying the knife.

## CHAPTER IV.

### THE GOVERNMENT AND THE RAILWAYS.

The Claim of the Corporation to Immunity from Examination—The Proper Limit of State Interference—Paternalism not Involved in Such Interference—The Inadequacy of Past Legislation—The Character of the Necessary Legislation—Public Sentiment in its Bearing upon the Stages of Railway Development—The Early Opposition to Railways—The Era of State Aid and Encouragement—The Period of Railway Oppression and Retaliatory Legislation—The Beginnings of the Period of Examination into Political and Economic Principles.

IN order that the main question may be made prominent, let us eliminate certain secondary questions, and marshal together the concessions which I have hitherto made. First, then, let us assume that corporations are necessary for the conduct of such large enterprises as require associated capital; second, that private corporations—that is, those organized for the conduct of strictly private business—may be entitled to the same privacy as that to which the individual citizen is entitled in the conduct of his business; third, that aggregation or accumulation of capital is in itself not a dangerous



or harmful thing ; fourth, that it may be inexpedient to resort to any specific legislation concerning lesser combinations, such as those I have designated as trusts of the second class, because these, while they produce temporary disorder, may be expected to defeat themselves. Let us finally assume, generally, that the characteristic of a free government is non-interference, but that this necessarily means that such government shall not only itself not interfere with individual right, but also that it shall not permit interference with that right by any individual or corporation. This imports that the government shall not only open, but shall keep open, the doors of opportunity to talent, virtue, skill, and capital.

Having made these concessions, the whole question becomes narrowed down to this : Are quasi-public corporations, which are operated for profit, and which in the exercise of their necessary functions may injuriously affect individual industrial rights — are such corporations entitled to immunity from examination in the conduct of their business ? If they are not, and if we determine that systematic secrecy lies at the bottom of the whole trouble ; that this secrecy is an obstacle not only to the right conduct of business, but to the examination into the nature and extent of the misconduct ; and

if we conclude that this state of affairs can be corrected only by governmental supervision and control, the next point to be considered will be the extent and the limit to which such supervision and control can safely go.

There are those among the reformers who are so pre-occupied in considering the manifest evils of State interference that they instinctively dread to examine any proposition which suggests such recourse as necessary.

I think this may be said to be the case among many of those who are opposed to the theory and practice of protection. They see the guaranties of liberty and security weakened by the State itself, in its interference under the theory of protection, and they thereby come to conclude that all State interference must be necessarily vicious. But if it is vicious for the State itself to interfere with the common right, it is also wrong for it to allow such interference. An examination, therefore, of the true functions of State activity should lead us to measure both the virtue and the vice of such activity, by its purpose and its effect. So measuring it, we shall find that where industrial liberty is the object to be secured, it is quite as necessary for the State to exert activity in order to prevent any of its artificial creatures from interfering with this industrial liberty, as it is for the State

itself to refrain from exerting activity by direct interference with it. And, indeed, upon closer examination we shall find, of the two kinds of interference with this liberty, that which is exerted by the creature—the corporation—is far more dangerous than that which is exerted by the State itself; for of the latter it may at least be said that the interference is publicly conducted and that the revenues which are derived from it belong to the people; whilst of the former kind, the “protection” exerted by the corporation is secret and its revenues belong to a corporation. If we will further look behind names and appearances to the structure of things, we may be led to ask what can be more “protective,” in the worst sense of that word, than the systematic exactions made by a railway company upon the flourishing industries of a mining camp of one community under the pretext of encouraging the languishing industries of a mining camp of another community? If protection by the government aimed against a foreign nation and presumably in behalf of our own nation, be wrong because it is a violation of fundamental principles, what shall we say of “protection” exerted by a sinister corporation—in secret—in order that a thousand localities in our own country may be supported by exactions from a thousand other localities in

the same country, under the pretext of equalizing industry, but with the more constant and real purpose of securing the gain of the railway corporation? <sup>1</sup>

There are those, on the other hand, who have given themselves up so completely to the paternal idea of government as to fancy State interference in all things to be the panacea for every evil. But if, in the particular subject under discussion, we will make the distinction be-

<sup>1</sup> The following is part of the testimony given by Mr. Charles Francis Adams before the Senate Committee on Interstate Commerce.

The Chairman.—Congress can do something, if the railroads will help.

Mr. Adams.—So far as I am concerned, I should certainly be most ready to aid you to the full extent of my power.

The Chairman.—But not if the railroads are going to take the position that there is nothing that Congress, or any other legislative authority, can do.

Mr. Adams.—You will have very great difficulty at the outset in establishing publicity of rates.

The Chairman.—Why?

Mr. Adams.—They have to vary at different places and at different times. I will state one case in point. We have a given rate for the transportation of ores. It is no more than affords us a fair compensation for doing the business. There is a camp which produces very low-grade ores. I say to the general traffic manager: "That traffic is of importance to us, and it is better for us to carry it at a loss, by means of a rebate on the general rate, than to have the mines close up and so destroy the camp. To the camp we carry the miners and their families, we carry every thing they eat and drink and wear; and we carry out the ore. We make something on the camp generally; and therefore we cannot afford to let it close up, if by a reduction in our rates—even though we can reduce them below the paying point—we can keep it alive." One would say that this was sound business reasoning. But if we could not allow a rebate we could not do this

tween functional evils, such as those minor combinations and trusts which I have designated as of the second class—evils which if let alone will cure themselves,—if we will make the distinction between these and those larger evils which flourish by secret alliances of the railway managers — evils which challenge the power of the State itself, and are constant menaces to the permanency of the republic—I think we must thing, for we could not make that reduced rate general. We should go to pieces if we did.

Senator Harris.—Suppose the transportation companies fix their rates upon the various grades of freight, and in the particular case you put you fix the rate on ores to suit the emergency surrounding that particular transaction or that particular place. Is there any reason why that rate, as well as every other rate, may not be made public?

Mr. Adams.—That would be in the nature of a rebate, which you say would be forbidden under your proposed law.

Senator Harris.—It would be in the nature of a special rate, but not quite a rebate as I understand rebates.

Mr. Adams.—The difficulty you would meet in the case proposed would be that other camps differently situated, and other communities where the burden was not the same, would say they were discriminated against. So they are. Under exceptional circumstances, essential to the life of a given community, you are carrying out freight at a lower rate than is charged to any other community. The only answer would be, that, if you did not do so, the community in question could not live.

Senator Harris.—You are thus trying to break down with your railroad this law of the survival of the fittest, and yet you do not think the government ought to break it down.

Mr. Adams.—That is perfectly true. That is one of the make-shifts to which we have to resort in order to keep the business alive. Your criticism is just.

("Report of the Senate Committee on Interstate Commerce," p. 1213, Washington, 1886.)

conclude that whilst legislation may be unwise, or at least unnecessary, with reference to the evils of the former class, it is imperatively demanded by every consideration of industrial right, with reference to those of the latter class.

But the power of the State must be clearly confined to supervision and control, and must involve no kind of State ownership or interest for profits. For if the ultimate rule of industrial right which I have been endeavoring to apply to economic practices will not permit the corporation to impair the industrial right of the citizen; if it will not allow corporation conspiracies to exist and trusts to flourish, because they interfere with equal industrial right, it will surely, on the other hand, not permit the government itself to interfere with such right by becoming a direct participant in industry; for such equal industrial right can only be preserved when the power entrusted to guard it has no motive of direct interest or commercial profit by which it can be swayed. In the end, the essential function of a free government is restricted to the guardianship of political and industrial equality, and this guardianship necessarily involves judicial and impartial relations to the subject-matter of control. Such relations can only be maintained where the guardian has no interest whatever, either as owner or as com-

petitor. The government can never secure a free field for competition to all the citizens where it is not disinterested. As well might we expect a judge to decide equally and fairly between litigants, when that judge is an interested party, as to expect a government to preserve industrial equality where its interests are involved as a participant in profits.

This principle does not preclude government ownership where industrial competition is not a factor. The government may own a navy without impairing the principle. Such ownership is not for profit. It may own and conduct a post-office; this is for convenience and without profit. For the like reason it may own and conduct an exclusive telegraph system. It has been the owner of vast untenanted lands in the West. These have never been dealt with as a private owner deals with his property. Where part of this land has been sold, competitive bidding has not been resorted to to effect sales, nor has there been any motive to secure the largest price that could be realized. The whole motive of the government in selling these lands, was to secure their settlement by the people on the most favorable terms, not for money value, but for the well-being of the whole country. It is true that a large part of these lands has been handed over to corporations for the ostensible purpose

of promoting railway construction. Whether this was wise or unwise, the government's motive was not the same as that of a private owner who seeks to make a profit.

It may be set down as an invariable rule that wherever gain is the motive, that is, wherever industry is pursued for direct profit, the government cannot be an owner or a participant in industry, because it can never under such circumstances exercise a judicial control. It can never, as the possessor of an industrial interest, hold in poise the industrial rights of those who are engaged in that interest. It can never successfully prevent aggression by one class upon another, when it is allied with one class or the other; or when it has interests which are in conflict with those of all classes. But it can, and should, maintain equal industrial right.

Paternalism is in no way implied by such governmental guardianship. The government, in preserving equal industrial right, does not trench upon the non-paternal functions; nor can it, so long as its acts are in accordance with the motive of keeping the field clear from factitious interferences. The government, for instance, cannot be said to be giving any paternal aid to a citizen when it restrains a robber from disturbing the citizen's just accumulations. Such a governmental act does not lessen the



citizen's incentive for industrial activity or for accumulation. It does not impair human energy; on the contrary, it guards this incentive and energy from aggression, by repressing the aggressor, so that the incentive and the energy may have free scope. In like manner the government affords no paternal aid whatever to the citizen by preventing a secret conclave of transporters, who create an aggressive trust, and thereby obstruct the right of that industrial citizen to the free and fair pursuit of his business.

If we will keep clearly in mind the distinction between a power which is exercised to prevent factitious interferences among workers in a field of industry, and one which exists and is exerted to create such interferences, we shall see that these two powers are diametrically opposite; and that when they come in conflict, if the one which employs secret interferences prevail, our industries will be subject to intermeddling, whether we call the dominant power a railway corporation or a State. If, on the other hand, the power which aims to prevent such interference overcome the one which furthers them, we shall have free industry. There can be no phase of paternalism involved in the accomplishment of this end; it is simply the subordination of an artificial power, which itself is essentially in the nature of a paternal interference.

Having thus indicated what should be the limit of State action, I will more specifically notice one or two essential qualities of such action. Inverting the order of a proposition stated at the beginning of this chapter, I may say that if the government cannot of right be itself an aggressor upon the industrial equality of the citizens, it cannot, by any delegation of its power, permit aggression to a subordinate. And whenever such subordinate assumes to exercise such power, and does exercise it, the State must not only punish the specific iniquitous act, but when it appears that such act proceeds from a system, the State must exercise such authority as is necessary to prevent the evils of that system. This is especially the case where the opportunities for such aggressive conduct are essential features of the system itself.

To apply this reasoning directly to the subject, the legislator seeking to frame adequate legislation must bear in mind that it is not enough to provide legislation against detailed wrongs, as they exhibit themselves in railway management, where such wrongs arise from a system. I think we may infer from a consideration of the whole problem that the erection of a court of inquiry will not be sufficient to correct the whole evil. It will be impossible to constitute a court properly equipped for

the work of hearing and determining all the multitudinous instances of railway dereliction, even where there are no obstacles in the way of investigation ; much less will it be within the province of a court to deal with a vast system which demands continuous inspection. This rather requires executive, administrative, and judicial functions combined. By the very constitution of a court it can only deal with results. The Interstate Commerce Commission has, from its institution to the present time, exhibited its complete inadequacy in this respect. Indeed, it has been unable to deal even with the specific evils which have come before it, since besides a want of time for their consideration, it has been hampered by its incapacity, under existing law, to reach the secrets in the specific complaints which it has considered. A reform which would deal with an elaborated system of evil cannot, therefore, be confined to treating consequences, the separate incidents of the system. There must be a power which can go behind these and grapple with causes. There must, therefore, be something more than a court. There must be a commission, a department of government, which will provide organized supervision and inspection against which the quasi-public corporation can claim no privacy as inviolable. Such a department must be clothed with the power

to ascertain precisely where and how the evils of the present methods originate, and when these are ascertained it must be able to apply the remedy at the source of evil. The remedial force must be of a preventive kind.

I am quite aware that, under such a system, organized through federal legislation alone, the entire evil will not yet be reached. Concurrent with this federal legislation there must be corresponding State legislation, through which similar systems of inspection and examination shall be organized in the several States. But it must be seen that the institution of such federal legislation, as the initial step towards both the ascertainment and the solution of the problem, will educate the public mind to the necessity of State legislation, and that this will follow the federal action just as the evils come to be more clearly brought to light.

Railway construction continues to increase in the United States with immense rapidity. Concurrent with this increase, and notwithstanding all the efforts that have been made at restraint, the aggressions upon political and industrial right increase also. Nor is it likely that without more rigorous control than is now exercised, these aggressions will be any less active than they are to-day. It is coming to be pretty generally realized that the In-

terstate Commerce legislation has not at all fulfilled the expectations of its friends. But this is a frequent trait of tentative legislation. It is not reasonable to expect that the first efforts to solve a problem, the factors of which are so hidden and complex, will be followed by complete success. As I have hitherto intimated, some part of the legislation which has been enacted has had a tendency rather to aggravate a part of the evil which it aimed to cure ; but the reason for this, when one examines it, is quite natural, and affords no ground for discouragement. Such railway managers as have been disposed to be law-abiding, under the influence of this partially restrictive legislation, have found themselves at a great disadvantage in their relations with that larger number who persist in the forbidden use of secret methods, and who thereby increase their influence and their profits. The passage of the amendment against pooling has tended towards an aggravation of this condition, notwithstanding the fact that these restrictive amendments are clearly in accordance with sound principles. All this, I say, was to be expected as a result of the necessarily incoherent and tentative character of initial legislation upon a problem which is full of confusing details. Especially was it to be looked for

where the first efforts of the legislature were limited to attempts at dealing with these details, rather than with the causes which lay beneath them. But this failure of hoped-for fruits is no reason for discontinuing efforts to reach the evils which are hidden in railway management. The existing Commission has, with all its limitations, been of immense importance in educating the public mind upon the problem, and in giving a clearer perception of the political and industrial disadvantages resulting from a system which confers success upon dishonesty, and visits failure upon honesty. Even if its work has so far only been instrumental in illustrating the political solecism of the helplessness of honest methods in existing railway management, it must be admitted it has accomplished a great deal. It has in this way indicated the duty of those who should guard our freedom, to remove the hindrances to honesty and justice by more elaborate and definite legislation than has hitherto been enacted. Nor is it any fault of the members composing the Commission that the problem has remained unsolved, for no problem in which secrecy plays so great a part can ever be solved until the factors essential for solution are first brought to light from their secret hiding-places. The Commission has undoubt-

edly aimed at unveiling this secrecy, but it is plain, upon examination of its powers and functions, that it is not clothed with the authority which will enable it to accomplish this. While the amendment forbidding combinations has rather increased than lessened secret practices and evasions, a repeal of that amendment would not help the situation; since the men whom Mr. Adams, rather severely, designates as "sneak-thieves and pickpockets" would not by such repeal be driven to relinquish the processes through which they thrive.

Inadequate as the legislation has hitherto been, it plainly lies in the line of progressive reform. It is the first step towards a comprehensive settlement of the question; and I think it may be said that a growing public opinion plainly tends towards this end. A brief outline of the history of railways, as related to the permutations of this opinion regarding them, although it may involve some little repetition of what I have hitherto said, may be set forth as justifying a confidence in this result. Public opinion, as it has influenced and been influenced by the railway from the beginning, presents rather a curious study. Following history from the building of the first steam railway to the present, we find several clearly marked epochs in this opinion which lie in logical order.

In the very earliest period there was a general and emphatic prejudice against all railway building. This first found its loudest expression among those whose immediate interests were imperilled. To those, for instance, who were engaged in the old means of transportation, and who saw their investments likely to be rendered worthless by the proposed new means, the railway corporation seemed to be only an invader of vested rights. To the farmer, the arbitrary seizure of land and the appropriation of it for railway construction by a monopoly, naturally seemed to be an act of pure aggression. This prejudice was by no means confined to those whose property was thus immediately affected. People fancied they saw the quiet and security to which they were accustomed gravely threatened. They feared the accidents which were likely to result from great trains running at high speed over public highways and through cities. Apprehensions became common regarding the general political rights which were threatened by the power of the corporation. Besides this, there were objections of a purely fanciful character, many of which, while they may have appeared forcible then, seem only absurd now. In a general way, the railway corporation was the physical expression of a new power, greater in its threat against personal



liberty than any thing that had ever before existed, at least in the history of industry. But these apprehensions were too vague to have any intellectual value. They grew out of a condition which prompts ignorance to find a monster in any new and untried power.

When the few who were directly interested, through motives of profit, in the promotion of this industry, succeeded in the face of public hostility in constructing short lines here and there, it was found that the public along these lines came gradually to adapt themselves to the new means of transportation, and to learn the physical convenience which resulted from these means. As people began to appreciate the ease and comfort which the railway brought, their prejudices partly yielded to this sense of convenience. The farmers living off the line of the railway, who, by tardy means and at a comparatively great expense, were obliged to haul their products by team to a local market, slowly came to realize that he who had railway facilities for the transportation of his goods had greatly the advantage. Gradually that which had been generally regarded as an unmitigated evil came to appear in the guise of a blessing; and as railway building proceeded, and as the conveniences of transportation were furthered, the objections came to be forgotten or ignored. The

commercial traffic of the past began to appear insignificant in comparison with that of the present. As in the great West the railway exhibited its wonderful capacity for populating untenanted areas and for promoting upon an immense scale the growth of agriculture, manufactures, and the development of the mines, the sense of convenience became overwhelming. The railway engineer who, in projecting new routes, had been looked upon in the East, at first, as an intruder, was here hailed as a beneficent deliverer. The desire to have railways became almost a craze. State and county credit were freely offered to the enterprising railway builder. Under circumstances which tended so little to inspection and examination, it could not be otherwise than that railway aggression should grow with rapid strides until its oppression should be severely felt. By the time railway construction had progressed to a point where it conferred general convenience, it had also arrived at the point when the element of aggression began to be felt. At length the practice of discrimination, the assumption by the railway managers of the right to regulate the industrial interests of different localities in accordance with private gain, and the consequent creation of trusts for controlling the whole field of special industries, became unendurable. Then there followed the

third stage in public opinion. This stage was characterized by vindictive legislation; at first in the West, where railway license had been the largest. Accompanying this there was repudiation by States and counties of obligations which had previously been freely given to promote railway construction. Following this came restrictive legislation which, in some instances, was so unreasonable as to make any railway management impossible. Some of the Granger legislation, and especially that of Iowa, was of this character, as were also some of the earlier efforts to secure congressional legislation.

In none of these periods up to this time had public opinion been moved to any thing like a dispassionate examination of railway management in its relation to industrial right in the larger political sense.

If the railway had come into being soon after the Revolution, when during the progress of the formation of the Constitution the mind of the nation was vividly alive to the importance of personal and individual liberty, it is not at all unlikely that such a policy might then have been pursued in regard to the industrial corporation, as would have given to the public the advantage of railway conveniences under conditions which would have been altogether consistent with industrial security and

liberty. It is not even impossible that in the earliest stages of railway building, principles of administration might have been established which would have put railway management upon a sound basis. But when once the sense of convenience became dominant, no reasoning, I think, would have been sufficient to induce such an examination as would have resulted in the necessary legislation. Public opinion had then grown too eager for convenience, and too apathetic towards principles, to admit of any restraint whatever upon any of the methods employed for the furthering of that convenience. However clearly an economic reformer might then have set forth the sound conditions of public restraint, his reasoning would not to any extent have modified the course of events. As a reasoner upon the situation it is doubtful whether he would have been listened to at all. Men finding physical comfort rapidly growing all about them, were not only not inclined themselves to examine the evils in the system which provided this comfort, but were disposed to be impatient of any attempt at examination made by others.

When we look then for the real influences which prevailed, we shall find that as the actual physical demonstration of convenience was necessary to induce the public to tolerate the

railways in the first instance, so after they were thus tolerated, actual physical demonstration of aggression, directly and severely felt by the individual, was necessary to induce this public to change its favor into opposition.

We may conclude, in general, that to most men truths must be taught directly as object lessons, in order that they may be induced to examine underlying principles. Under conditions of physical convenience it requires disaster, or at least physical inconvenience, to induce careful thought among the majority; natural forces, at any rate, operate far more potently upon most men's minds in producing a realization of economic truths than do arguments based upon principles. Political arguments only become really and generally persuasive when there is an imminent necessity behind them. Indeed so long as an existing industrial condition which rests upon a false theory does not produce disaster or grave inconvenience, the mass of people will not only put up with it, but will even approve of it. It has been observed that the failure of a crop will influence the farmer and change the volume of the agricultural vote far more than will political discussion of principles. If this is so, it is because he generalizes only from those facts which lie directly within his experience.

Whilst he is quick enough to realize disturbances when the moving cause is close within view, he will endure any degree of wrong, as long as it comes so indirectly that he cannot perceive its source. With good crops he is likely to submit without complaint to the abstractions made by the railway manager, even though such abstractions devour half the value of his crops or half the increased value of his lands; and he will even support the very power which does him injury as long as it works with sufficient indirectness and secrecy. The exceptional apathy of the agricultural citizen upon the railway question has been such that for a long time nothing could lead him to criticise a railway manager. He viewed this manager as one who not only contributed to but created his immediate physical comfort, and when at length he did awaken to some realization of his oppression, his instinct at first led him to resentment rather than quiet examination. All this progressed under a law of human development; for it seems to lie in the order of nature that man can only be brought to a realization of the conditions of freedom through actual suffering from oppression.

But if a dispassionate examination in its larger aspect was not to be expected in the earlier stages of the railway industry, never-

theless, each one of these stages came in natural sequence, and they constitute the necessary material for such examination.

In order to contrast more vividly these transitional stages of public opinion, I will briefly recapitulate them.

In the first stage, public opinion exerted itself against the railway. This opinion was born of ignorance. As railway construction progressed, this public opinion turned in favor of railways. This was born of recognized convenience. If, at the first stage, prejudice distorted the mind, at the second it distorted the mind and the conscience, and was more continuous. In the next stage, the railway aggressions became unendurable, and this public opinion again turned against the railways with vindictive legislation. Thus there was a movement from a condition of passionate hostility to one of emotional encouragement, and from this to one of vindictive resentment. In all these stages of opinion, the emotions, while inadequate to reach the problem as an economic problem, have indicated by that inadequacy the need of some other mode of solution; and together they point with certainty to unprejudiced examination as the method which must finally prevail. Here, then, we have arrived at the fourth stage, but we are only upon the threshold. Examination has not

yet reached the source of the evil, nor will it be likely to do so until the veil of secrecy is removed. We have so far, then, limited ourselves to looking only at the exterior—to dealing with results and details,—and our legislation has fallen into accord with this kind of examination. But the problem having reached its present stage through the logic of events themselves, will by the same logic necessarily continue to move. Having been driven by the failure of mere expedients to the patient and passionless study of fundamental principles and their application, we may hope that these ultimate means shall not only not be abandoned, but shall be thoroughly and persistently employed.

This kind of examination the railway powers, on one pretext or another, are pertinaciously resisting; but nevertheless it is one to which they must submit, for it falls within the lines of logical progress.



## CHAPTER V.

### THE EFFECTS OF STATE INACTION.

The Relation of Government Inaction to the Growth of Co-operative Organizations—The Activity of Railway Managers in Enlarging their Interests and Power—The Enlargement of Trunk Lines not Objectionable—Objections to the Consolidation of Trunk Lines—The Effect of Consolidation on Industrial Right—The Present Stage of Public Opinion as Derived from Past Experience of Railway Methods—The Argument from Analogy in Favor of State Supervision of Railways—The Inadequacy of Legislation Directed against the Trust as Such—The Source of the Evil in Secret Combinations of the Trust and the Railway—The Necessity of Government Interference to Prevent Such Combination—The Advantages of Initiative Federal Action, and the Probable Necessity for a Constitutional Amendment—Centralization not Implied in Such Federal Legislation.

WHEREVER a government which is republican in form fails to perform its function of guarding the equal industrial right of the citizens, there co-operative organizations formed by classes of citizens in their own behalf will be very likely to spring up. Such organizations are not the result of a careful study of the situation. They come from the instinct of self-preservation which is aroused in the multitude by discontent at their surroundings. This discontent proceeds

from a vague sense that wrong has been done—wrong which they cannot adequately explain, or for which they do not see any correct or efficient remedy. These organizations develop silently, either when injustice is done or permitted through the neglect of the government; but though they develop silently, they usually operate with certainty and always with directness. Although reasoning is not an ordinary characteristic of the masses, and the relation of cause and effect is not apt to be distinguished clearly, yet this relation itself will not be severed; it persists, and will exert a dynamic force by moving the unreasoning mass to some sort of action. If in a republic there exists any great artificial power which treats men as pawns and nine-pins, then by the persistence of natural law that power in the end must suffer with those against whom it is exerted. This is the course by which nature, more constant than weak or neglectful governments, begins to punish infractions of justice, and by this beginning it means to suggest that if freedom and security are to continue, grave industrial evils must cease; and that if freedom and security fail, the foundations upon which all industries rest must likewise fail.

The instinctive efforts to supply the failure of governmental protection which thus arise, will

manifest themselves just to the degree that the citizens are possessed of individual and political vitality—to the degree that they have vital instincts for freedom. Where servility prevails, the citizens may tamely accept aggression, and if this aggression incidentally produces some physical convenience, a submissive people may endure it for a long time. But where the citizens are sensitive to wrong, their efforts at self-protection or their resistance will inevitably be prompt. Thus the disposition to counteract the government's failure to protect, may be taken as a correct index of the individual vitality that prevails.

Now, in a country like ours, where there is great individual activity, and where the government exercises so little restraint in preventing trespass upon the equal industrial rights of the citizens, either resentment or organized self-protection will grow until the underlying causes of the evil are removed. To apply this specifically, it seems to me tolerably plain that the failure of our good-natured and easy-going government to restrain the aggressions of the railway corporations furnishes sufficient reason for the spontaneous growth and activity of such organizations as the Knights of Labor, and for such developments as railway strikes. More than this, when we consider the immense and intimate influence,

direct and indirect, which the railway corporation exerts upon every industrial act of the citizens of this country, we have the underlying reason for most of our industrial disorders and delusions. Every thing we eat, every thing we wear, every thing we make, all our movements, all our intercourse, so largely depend upon transportation, that when this is controlled by a corporate power working for its own aggrandizement, and clothed with authority, we can easily see how it is that every interest in the land has been more or less subordinated to it, and how every industry in the land is more or less unsettled by reason of this subjection. In addition to this organized protest, but springing from the same cause, the general sense of individual discontent manifests itself in various ways. We see it expressed by jurors who find unreasonable damages against railway companies. We see it moving our legislators to impose excessive taxes upon railway corporations—as if these were means of discipline, or as if the exercise of personal resentment would of itself produce reform. But such methods only serve to make the railway managers anxious to secure a larger hold upon power in order to counteract these personal measures. Such hostility as this has made many of these managers wish for what

they call a stronger government—that is, a government which shall place particular restraint upon hostile interferences with what they regard as their vested power.

If we judge the workings of these self-protective organizations by the motives which actuate them, we shall find that their methods are not logical. Whilst, as I have heretofore said, they move with certainty and directness, it is not the certainty or directness of wisdom; nor are they likely to accomplish their own ultimate aims, for they do not attempt an analysis of the evils which they antagonize. Nor do they seek, by intelligent means, the solution of any economic problem. They are not actuated by a spirit of patriotism, nor do their acts tend in any respect towards securing the general political welfare. In fact, these organizations and unions are usually moved by the same kind of selfishness as that which characterizes the railway corporation itself. If their processes do not always show vindictiveness, they exhibit instinctive efforts to counteract one class of evils by the institution of another of the same order; and indeed a disposition to imitate the methods of pre-existing aggressive agents usually characterizes all individual or associated action where the law does not protect. But that which I wish particularly to emphasize, is that these

organizations and mistaken methods exist as a logical sequence of those aggressions which the government primarily permits. They are resultant, not original, forces ; and the only good service which they render is that in some measure they indicate the growth of disease in the body politic. But even this is an indirect and unintended result. It is true that the Knights of Labor and like organizations, and the prevailing discontent and irritation, have not been entirely contemporaneous with the beginning of railway aggressions. But this is plainly due to the circumstance that these aggressions were, as I have hitherto indicated, unrealized by the people so long as the general sense of convenience was supreme, or so long as it was not directly or gravely disturbed. But it will be noticed that efforts at self-protection and retaliation arose promptly when the railway aggressions had proceeded to a point where they were instinctively and seriously felt, notwithstanding the incidental conveniences conferred.

Passing from this industrial discontent to a consideration of the present movements of the railway corporations, it may be observed that whilst legislation upon the problem has been lagging, the railway managers themselves have been quite active, and this activity has been exerted by each of the trunk lines towards secur-

ing the enlargement of its system. If this growth of ownership is limited to separate trunk lines—that is, if it does not involve any combination or consolidation between these lines, it seems to me to be a growth which is suggested by both necessity and convenience, and one which falls into accord with economic law. Besides, as I shall hereafter seek to show, it is one which is not inconsistent with the theory of our government. When we examine the extension of the several trunk line systems, we shall find that there are unquestionable advantages in its favor. A trunk line which grows by purchase of, or by permanent alliance with, contributing lines tends to insure greater facility and economy in operation. Not only is this greater facility and economy insured, but the government is also thereby enabled with more ease and certainty to conduct systematic inspection, and thus to secure industrial justice to the citizens. It must be borne in mind, however, that such enlargement of the several trunk-line systems does not imply anything like consolidation of, or combination between, these several lines; and it seems to me there is no ground for apprehension that any permanent union of this kind will ever take place.

{ The separate autonomy of these lines has rea-

sons for being and reasons for continuance which are founded in sound political economy—reasons, therefore, which will not lose their cogency. It may be said that there are inherent tendencies in the situation itself which are hostile to consolidation. The Eastern termini of these lines are at the seaboard, where there is an outlet to the world. No one of these lines is wholly at the mercy of the others. They have not, in this respect, the weakness which the smaller contributing lines in the interior have—a weakness which often places these smaller lines wholly in the power of the trunk lines with which they are connected. Under these conditions of equal seaboard facilities, no one trunk line can be compelled to surrender to the others, and when abnormal competition takes place between them, each one of the contestants becomes a like sufferer by that competition. It is true there have been many suggestions looking to consolidation; there have been, besides, one or two efforts in this direction; but none of these has been signalized by any thing like success.<sup>1</sup> The manager of each one of

<sup>1</sup> It has lately been reported by the newspapers, that the control of the Chesapeake and Ohio Railroad has been acquired by those in control of the New York Central Railroad. Accepting this as true it is nevertheless not necessary to infer from it that a complete union of even these two lines is intended or will result. Indeed there are certain relations held by the State of Virginia toward the Chesapeake and Ohio Railroad which would be likely to interfere with such a con-



the four great systems has hitherto exhibited a strong disposition to hold the autonomy of his line with great jealousy. There is an element of pride in separate management which, brought to the test, will not easily surrender, and though the manager of a large trunk line may be ready to suggest consolidation, he will probably expect his line to absorb the others and not to be absorbed by them. The nearest approach to general union that has ever taken place has been by combinations which were made in times of severe railway warfare; but these have only served the purpose of temporary truces.

I have said that one reason in favor of concentration of capital by enlargement of each of the several trunk-line systems consists in the fact that the government can thereby more easily exercise an efficient supervision over railway management. This may suggest to some minds, that if governmental supervision is thus rendered more easy, it might be rendered easier still by the consolidation of the whole railway interest.

summation. But if, notwithstanding, a complete union is intended, this would by no means imply a tendency on the part of the large trunk lines toward a general consolidation. So far as experience goes concerning the large trunk lines, we know that even those of them which have had to struggle with insolvency have shown a constant disposition and a capacity to maintain separate existences. The Erie railway fell into bankruptcy years ago, and the Reading and Baltimore and Ohio roads lately, yet from one consideration or another, each of these has maintained its individuality.

This would no doubt be forcible reasoning in favor of consolidation, if the sole purpose of interstate legislation were to secure facility for governmental inspection. But when we consider the political question which is involved, we find that such consolidation necessarily antagonizes the theory of our government. As well might we argue that because the counties of the several States are not sovereign, but are subject to central State sovereignty, therefore, the States themselves might better be governed by one sovereignty exercised by a central government. If absolute power were the end in view—that is, if a monarchy rather than a democracy were sought, this reasoning would be conclusive. But the answer to it is that in a democracy diffusion of power is desirable wherever such diffusion is possible; and that the chief advantage which we claim for our government over any other kind of government (and over all ancient democracies) is that we have a federation of sovereignties by which this diffusion is assured. Now, it must be obvious that the separate autonomic railway control by trunk lines is more in accord with a diffusion of their power than would be consolidation, and such autonomic control is, therefore, more in accord with the genius of our government. This seems to me to be the sufficient

answer, but besides this it may be said that concentration of capital and ownership as between the trunk lines and their feeders is a necessity arising from physical conditions and surrounding circumstances, while consolidation has no such reason for being.

Whilst, then, the separate growth of the several trunk lines is a necessary growth, it allows the operation of a general competition for the largest part of the transportation of freights. Under these circumstances, it will be seen that the most important field for governmental inspection and regulation is at the local points, or points which general competition does not reach. It is true that a citizen living in a locality distant from the market, at a non-competitive point, is under an unquestionable disadvantage, as compared with one who lives near the market and at a competitive point; but where sound economic conditions exist, this disadvantage is one which the citizen in choosing his location can fully estimate. The value of his property will fall into accord with the local surroundings, and it will continue in such accord so long as it is not obstructed by factitious interferences. There ought to be no one spot in the country where a man must hold his industrial right upon a less secure tenure than in any other. But wherever a power endowed by the State and working for

self-interest holds industrial control of the situation, the citizen's tenure will be rendered precarious, and there results plainly an interference with the principle of industrial equality, which no free State can itself of right exercise, or permit any power within its bounds to assume.

I have heretofore said that if the government were to confer upon one of two suitors the power to determine a question between himself and the other suitor, such an act would be contrary to the plainest principles of justice. If this were done between individuals there might still remain hope for occasional justice, because a suitor, being human, is sometimes open to appeals to conscience; he may be moved by a sense of equity and justice superior to his interests. But if the government were to confer upon a corporation the power to decide in any industrial dispute between such corporation and an individual, there could be but little hope for unselfish justice. The corporation is not an individual; it has not a conscience; it has not a better nature to appeal to; its sole sense is its own narrow interest. Nevertheless, the evil of such a case, great as it would be, would not become universal so long as there were a number of these corporations engaged in general competition for business, since the contest between them would, at least at some points in the

country, produce relief to some of the citizens. But the case would become entirely hopeless if the State were to confer upon all these corporations the power of unified ownership and control, on the theory that, thus united, they would, by the practice of self-restraint, do justice.

There is another important reason to be urged for strict supervision at these local points. If the railway managers are restrained from making undue exactions at these points, then the revenues which supply losses sustained by abnormal competition in carrying through freights, would fail them, and this failure would suggest a necessity for wholesome restraint when contemplating such abnormal competition.

The railway interests of the United States comprise more than one hundred and fifty thousand miles of railway; this constitutes more than half of the railway mileage of the world. Under this system the transportation for over sixty millions of people is conducted. The railway corporation thus has an influence, direct and indirect, over every citizen's right which is as intimate as it is extensive. Now, in view of all this, we can readily realize that to consolidate this power by unity of ownership, and to permit a single management in pursuit of gain

to maintain its course in secrecy, would indeed present us with an anomaly, under a republican form of government. The suggestion of "a great consolidated corporation or trust" of the railway power, which shall be recognized by law, is a suggestion which, it seems to me, can only come from the minds of those who are forgetful of what constitutes a republic.

It is perhaps safe to say that not one in a hundred of the citizens of this country is directly interested in the private gains of the railways. Probably ninety-nine out of every hundred, however they may be benefited by the convenience which the railways afford, are injured by the exactions of the railway managers. This ninety-nine per cent. need only to learn how unnecessary all these exactions and aggressions are. Slow as the general public have been to realize the full force of the question, I think it may be confidently asserted that before the time comes when a consolidation or trust can be consummated, they will have learned, by experience, the antagonism which must of necessity exist between such a consolidation and their own political and industrial rights; and with this realization we may feel sure that corporate sovereignty, working in secrecy and for illicit gains, cannot possibly become established among us.

If what I have heretofore set forth with reference to the transition of public opinion has the warrant of truth, I think it is safe to say that there are four rather definite impressions which are gradually permeating the public mind, and that they touch the core of the question. These are: First, that the quasi-public corporation has obtained a dangerous supremacy which it is employing in overthrowing industrial liberty, and which, if unchecked, will ultimately extinguish political liberty. Second, that the means by which this corporation is thus perverting industrial liberty are illicit, and in no sense necessary to the complete furtherance of industrial activity or of physical convenience. Third, that railway corporations themselves cannot promote wholesome industrial growth if they are permitted to continue the employment of dishonest methods of management. And fourth, that these corporations cannot be made to fall into accord with honest methods of management except by a constant supervision and control exercised by the guardian of the sovereignty of the people—the State. When these points, now indefinitely perceived, are generally realized, the people will come to appreciate the necessity of reducing the supremacy of the corporation by extirpating the abuses which now characterize its management. Moreover, I

hold it to be measurably certain that, with this general realization by the public, those who are intimately associated with railway management will also awaken to a realization that the extirpation of dishonest practices from the system will impart to the railway interest itself a basis of security which it does not now and cannot otherwise enjoy. When, after a lapse of time, a careful historical examination shall have given to the world a perspective view of the railway problem, I think we shall all come to regard with something like amazement the carelessness through which the government permitted a supremacy so essentially hostile to the simple principles which our forefathers aimed to guard by our fundamental law.

In looking more definitely at the method of procedure necessary to secure reform, we shall find that it is not to be expected, in so complex a subject, that a complete system of legislation can be created forthwith. The organization of a department for inspection can only be perfected by patient work and trial. There are, it is true, some inferences to be drawn from existing legislation concerning conditions which are, in some respect, analogous to the railway problem. When, after the civil war, excise taxes were imposed, the federal government found it necessary to institute a system of in-



spection and examination, in order to secure an honest account of the taxes due the government. Somewhat similarly, efforts have been made by legislation, in some of the States, towards securing the rights of policy-holders in life-insurance and fire-insurance companies. Then, too, the federal government has instituted a system of inspection with reference to the national banks. All these systems seemed at first to trench more or less upon privacy. This objection was not a new one. At different times for centuries it has been urged against kindred legislation; it was expressed with vehemence when the Court of Chancery first asserted the power of supervising the accounts of private trustees. The reasons, however, by which this prejudice was overcome, were found in the necessity of publicity as a means of securing honest conduct.

But after all, the analogies which I have above suggested concerning a system of inspection are rather remote. The remedies which the existing evils of railway management require are to a great extent *sui generis*, and this is because the evil to be corrected is *sui generis*. Although there have been, heretofore, vast industrial corporations which have interfered with government by reason of the sinister motive which actuated them, their existence presented

a very different problem for solution from that presented by the railways of to-day. The East India Company and the Hudson's Bay Company were instances of corporations which conflicted with political right; their franchises, however, were not employed in the country in which they originated; nor are they to be compared in the extent of their power to the combined railway franchises of this country. History has never before exhibited an instance of so extensive a corporate power governing industry as is furnished by the railway corporation. With all the conveniences which the steam railway has produced, industry has never been so dependent upon the transporters' power as it is to-day, nor has this power ever been so exacting or aggressive.

In considering the question of specific remedial legislation with reference to the prevalent industrial evils, it may be premised that in order to secure complete industrial reform, the legislator must have at least two certain mental qualifications. These are, first, the ability to perceive the fundamental principles of equal industrial right; and, second, the power to employ exact analytical thought upon the specific evils to be remedied. Moreover, it may be said that it is only by a union of these qualifications that such adequate reform can be assured; be-

cause however the legislator may realize political truths in themselves, if the exact character of the evils to be reached is not also understood and realized, he will be unable to make such a thorough application of his principles to the facts as will enable him to gain his end. I think it may be said that it is from the imperfect union of these qualities in the same mind that we are presented with so many instances of legislation which prove abortive. Whilst the legislator himself may be moved by the most patriotic motives, yet it must be seen that in dealing with isolated and multitudinous results by special legislation, rather than by attacking the underlying causes which produce these results, his efforts will be likely to be both fruitless and mischievous—fruitless, because they will not reach the causes of the evils; mischievous, because they tend to interfere with economic law.

In the present session of Congress a number of bills have been introduced, which are aimed generally and without discrimination, at all those combinations of private corporations which are called trusts. If we will study the natural effect of this legislation, I think we shall discover that whilst it may induce a change of names or a change of form of the organizations, it will not be likely to abolish

the vices which they practise, since it will not reach the cause of those vices; and if this cause is not touched, the trusts, whilst they may change their names, will only be warned by the hostile legislation to be more secretive and insidious in the continuance of their processes. If one needs to be assured of this, he has only to examine the inadequacy of our Interstate Commerce legislation as exhibited in the efforts of the Interstate Commission to deal with isolated instances of railway secrecy. The cases of the railways in their relations with the Standard Oil Trust, now pending before the Interstate Commerce Commission, will afford him the opportunity of learning how, when some of the secrets which the railways employ are partly exposed through the limited powers of the Commission, new and more skilful secrets are promptly substituted by the railways for those which the Commission have specifically forbidden. Another objection to the legislation which aims to deal generally and indiscriminately with the trusts, lies in the fact that these trusts are usually composed of private corporations, and may therefore be entitled to some sort of privacy in the conduct of their business which it will be difficult for legislation to reach; while the quasi-public corporations, such as the railways and the pipe-

lines, come more clearly within the province of federal control and inspection.

If, then, the analysis of the different trusts which I have hitherto made be correct, the really dangerous trusts, such as the Standard Oil Trust, the Cattle Trust, and the Cottonseed Oil Trust, will be found not to be independent forces, nor the originators of existing evils, but forces the whole existence of which depends upon their secret relations with the quasi-public corporations.

If the secrecy of the quasi-public corporation, therefore, be the source from which the dangerous trusts spring, this secrecy is the point to which legislation should be directed. When the railways and the pipe-lines are brought within such governmental inspection as will lay bare their secrets, the dangerous trusts which owe their being to these secrets must of necessity fall, and when they fall, their weak imitators—all those trusts which I have designated as of the second class—will fall also. It is to the germ of the evil that we should direct our attention, if we hope to eradicate that evil.

When the distinction between cause and result is clearly maintained, the evils of the trust will be realized as results of railway secrecy. We shall thereupon realize also that the kind of legislation we need will be pre-

ventive rather than punitive; that is, instead of punishing individuals for pursuing their industries under a system of railway secrecy which dominates all industry and makes vice a condition of signal success, we shall prevent the further growth of the evil by extirpating through public inspection the secrecy from which it arises.

It is not impossible that a careful examination of the basis of legislation may lead to the conclusion that a thorough solution of the problem will render necessary some constitutional amendment, which shall enable the government to exercise a more searching and methodic control and inspection of the quasi-public corporations. When federal legislation concerning railway management first came to be considered in Congress, the Constitution was naturally sought as a warrant for it. The third clause of eighth section of Article I. of the Constitution, which confers upon Congress the power "to regulate commerce with foreign nations and among the several States and with the Indian tribes," furnishes at present the foundation of whatever legislation has so far been enacted. If the Constitution be interpreted by the light of contemporaneous events, we must concede that the framers of that instrument, in enacting this clause, were actuated by the motive of prevent-

ing import discriminations between the States, and not by any definite motive of regulating quasi-public industrial corporations. These corporations did not exist at that time, nor could their growth, their magnitude, or their qualities have been foretold. If, by careful judicial examination it should be determined that this clause is not a sufficient warrant for the erection of an elaborate department of government, clothed with the power of systematically regulating and inspecting the vast railway system of the country as it affects interstate industries, then a thorough remedy will involve an amendment of the Constitution. If we hold it to be our duty in securing political liberty to look first and above all things at the principles upon which this liberty rests, and if we find these insufficiently set forth in our organic law, our only course is to amend that law by setting them forth. We should never fail to remember that the great act of our independence—that which made us a nation presumably free—consisted in an appeal from authority to principle. This appeal we finally embodied in a Constitution. Whilst that Constitution, in its turn, became our authority, it became so solely because it set forth fundamental principles. If by our industrial progress since, our industrial conditions have become so complex that the

simple provisions of that Constitution have become in some part insufficient to provide adequately for the new order of things, we need to exercise the same spirit as that which actuated those who formed that Constitution, by adding to its provisions such guards as have become necessary to protect the citizen against the aggressions which have grown up incidentally to our industrial growth. We should remember that no written paper can make us freemen, however accurately it may set forth the definitions of freedom. What we most need is a vital realization of fundamental principles, and the ability to apply them to our daily conduct.

It is, no doubt, dangerous for a people to be too ready for changes in their organic law. This danger has been illustrated in Mexico, where the caprices of the people made their government for a long time a succession of revolutions. It is so illustrated to-day in Hayti. I do not think that the American people lie in any peril from this source. Equally dangerous, however, is the disposition of a people to treat their organic law as an object of unquestioned reverence, and to worship it with a sentiment that forbids examination or change. In such case its terms become mere emotional declarations and abstractions, which fail in their influence upon daily life and conduct.



Concerning the ripeness of time for specific legislation, I think it is plain that we have, as I have heretofore indicated, arrived through successive stages at the point where more careful study of the problem has begun—at the threshold of reform based upon deliberate examination. We all know how for the past twenty-five years legislation has tended progressively towards details and has been promotive of class interests. During this time the delusion has prevailed that legislative enactment could accomplish almost any thing, and the legislature was resorted to to support all sorts of theories. Wherever any one had an impulse towards reform or desired some special privilege, he ran to the legislature to procure the passage of a special law. The efforts to illustrate the omnipotence of human legislation have but served at last to illustrate its impotence.

Observing a tendency of both vicious and reforming practices to run, in a general way, in cycles, I have called the present, the beginning of a new era. As false theories manifest a contagious and progressive character for a period, during which one such theory generates another, so sound economic ideas, when once they come to be realized, exhibit a like contagious and progressive character. There are evidences all about us that a new era

has set in, and the correct office of legislation is beginning to be somewhat better understood as a means to an end which must be based upon fundamental principles. It would seem to me altogether proper, under these circumstances, that federal legislation should precede States' legislation upon a problem which needs such fundamental examination, and which so nearly affects the interest of all the citizens of the country, and of all the States in their interstate relations, as does the railway problem. Federal legislation, by regulating interstate relations in the first instance, can make an application of these principles to the subject-matter far better than can any States' legislation. Such initiative federal action would secure more general attention, incite more general discussion, and by exercising a more general influence, produce more homogeneous legislation within the States, than could be expected by any initial States' legislation. Moreover, I think it altogether reasonable to expect that the States will not be slow to follow the example of the general government; that they will be prompted so to follow, not only by the illustrations of reform which shall be furnished through the federal legislation, but also by that wholesome jealousy which will actuate each State to

express and emphasize its own sovereignty by legislation.

Federal legislation, within the bounds which I have indicated, cannot be inconsistent with the American theory of government, not only because of its appropriate and specific sphere in regulating Interstate Commerce, but also by reason of the supreme and necessary motives which must characterize it—motives which make it essentially decentralizing. I am quite aware that this decentralizing quality has in one way and another been often questioned, not only by those to whom I have referred as in the railway interest, but also and particularly by a certain school of economists. Nevertheless, I think an examination will show that the doubts concerning it are vague and general, and that they do not rest upon careful examination. It seems to me that it is only necessary to make a careful and exact statement of the principle of the diffusion of governmental power in its application to the particular subject, in order to justify the correctness in theory of the reform suggested. There are reformers who stand so in dread of the phantom of federal centralization that they fail to distinguish between it and the substance. They so fear clothing the federal government with any power whatever that they dread all federal action, even

though it be that which guards the citizen against the very centralization which they dread. It is thus that, by federal inaction, they really encourage a centralizing tendency; not, it is true, centralization exerted by the general government itself, but what is worse, centralization exerted by a usurping State agent. There is, for instance, a reformer who confidently says: "It should never be forgotten that they who advocate the exercise of federal power upon the question of railway control cannot possibly be solicitous concerning the true theory of federal government. Such advocates may justly be called imperialists; they cannot be called federalists." What is the application of this to the case? How can one be called an imperialist whose whole purpose it is to restrain an aggressive power within the State from interference with the law of equal liberty? What kind of imperialism is that which contemplates the subordination to the government of an agent which has itself become so imperial that every citizen feels its aggressions? There need be no difficulty in determining between the centralizing and the decentralizing quality of any particular legislation, where the whole aim, purpose, and effect of that legislation are to secure a larger diffusion of power than exists, by preventing interfer-

ence with that diffusion by any factitious creation of the State. It would seem, therefore, that those who entertain apprehensions of federal centralization from such action, strike at the shadow and leave the substance untouched.

The only sensible course is to subject our industrial relations to a more rigid analysis than is ever afforded by those who, adhering to a school of thought, will accept nothing that does not fall into accord with the hoard of maxims of that school. It is a common characteristic of these to draw analogies from European governments and the conditions which surround European industries, rather than from those conditions which lie immediately about us; but our escape from the pernicious consequences which surround us can never be assured by confining our attention to a set of conditions which exists elsewhere. There must be a determined examination into the particular causes which produce our own conditions. The true benefits of the *laissez faire* are not to be found in rigid adherence to deductions; and inasmuch as the practical application of this doctrine cannot import that a man who robs another shall not be interfered with by government, so also it cannot import that a corporation which secretly abstracts from all the citizens shall not be restrained. On the other hand, such a practical

application does import that a free government is an active power, active not only in restraining itself from any tendency to interfere with equal opportunity, but also alert in guarding its citizens from the more insidious interferences of its created agents. If the doctrine of *laissez faire* has any virtue, it is because it is a proposition of a positive, not a negative, philosophy.

I said at the beginning of this essay that the only way in which we can solve the problem of railway management is to put its methods to the rigorous test of fundamental principles. Has it been our habit to do this? I think not. The most fundamental principle of our government, as set forth in the Declaration of Independence, is that which in substance declares that every citizen equally is entitled to life, to liberty, and to the security of his property; that these rights are to be guarded by laws which are adequate to prevent invasion upon them. This principle is accepted by all of us without question. But can we be said to have applied it to our industrial relations so long as we have a system where, when two men establish a competitive industry—starting with equal capital, sagacity, and skill,—one of them is so secretly favored by a power derived from the State, that he becomes enormously wealthy, and the other is so injured, in secret, by this same

power, that he becomes hopelessly bankrupt? To employ an illustration from judicial decision, a justice of the Supreme Court has defined the railway relations to the State thus:

“The highways in a State are the highways of the State. Convenient ways and means of inter-communication are the first evidence of the civilization of a people. The highways of a country are not of private but of public institution and regulation. In modern times, it is true, government is in the habit in some countries of letting out the construction of important highways requiring a large expenditure of capital to agents, generally corporate bodies created for the purpose, and giving to them the right of taxing those who travel or transport goods thereon as a means of obtaining compensation for their outlay. But a superintending power over the highways, and the charges imposed upon the public for their use, always remains in the government. This is not only its indefeasible right, but is necessary for the protection of the people against extortion and abuse. These propositions we deem to be incontrovertible.”<sup>1</sup>

But is it the office of an agent to establish a system of secrecy; to usurp the power of his principal; to hold his secrets from his sovereign?

<sup>1</sup> U. S. Supreme Court Reports, 118, p. 586.

Now, although we have these principles embodied in our fundamental law and judicially declared, the specific means for securing the application of them to our daily life is wanting. The principles without such means of application are words which carry no weight. They have no practical value; they are mere declarations of abstract political virtue. The only possible way by which we may bring them into practice in dealing with railway power, is by setting up within the State a power which shall be more systematic and more constant than the systematic power by which the evils are perpetrated. The creation of such a power will render necessary a department of government for the constant inspection and publication of the acts, and of the relations to the public, of the quasi-public corporation which has hitherto ruled us with the *régime* of secrecy.

The questions involved in the problem are not yet in a party sense political; but they seem to be moving towards that condition. If, when these become political issues, the railway power shall have acquired sufficient supremacy to overcome the jealous sense of equal industrial right, as well as the right itself, it must be at the sacrifice of our Constitution, because political liberty and railway aggrandizement are forces which do not and cannot run in paral-



lel lines. They are essentially and diametrically opposites; one or the other must be subjected. If the railway power shall become supreme, it is possible we may be submissive enough to accept a political existence which shall fall into congruity with the conditions which that power imposes. In that event we may look for such continued degradation of morals and for such supremacy of machine methods in politics as will impress upon our government, whatever name we may give it, qualities which are essentially different from those of real republicanism, democracy, or freedom.

THE END.

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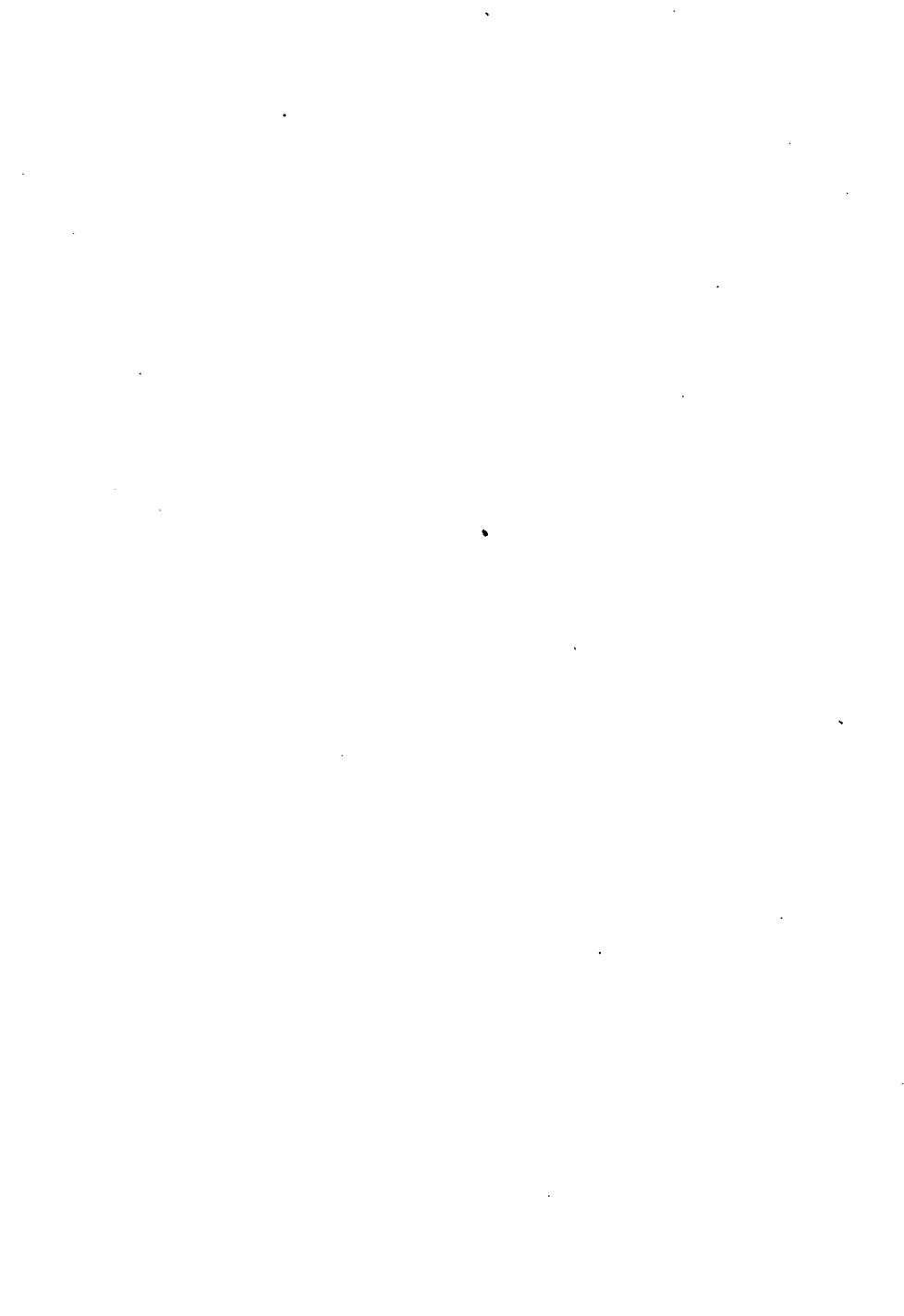
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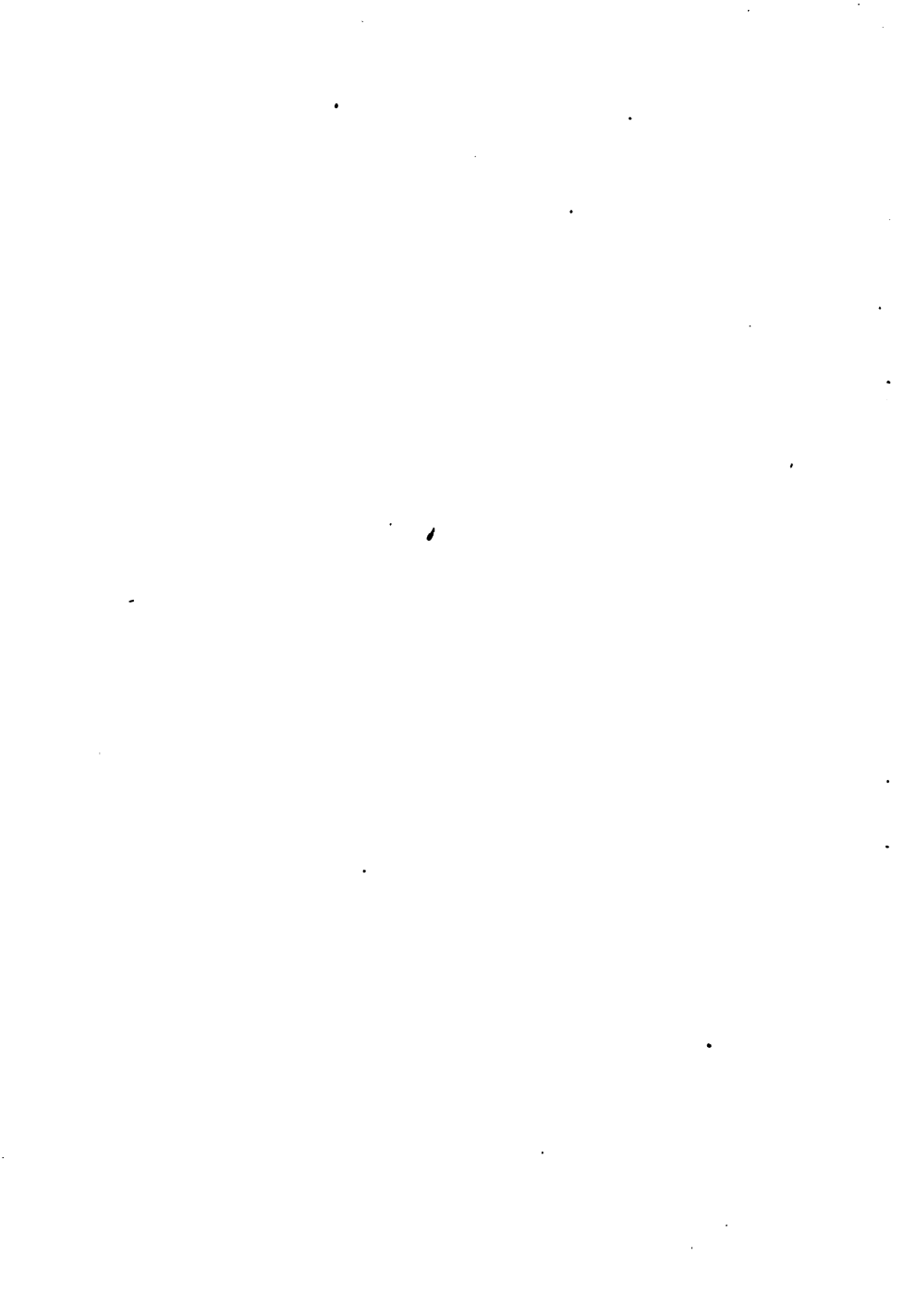
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